

JERSEY / JUDGMENT

AG v Ferguson [2022]

JRC 124 (09 June 2022)

[2022] JRC 124

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. On 12 th November 2021 the defendant was convicted of being concerned in the supply of a Class A drug, namely cocaine. He was tried by the Inferior Number and subsequently sentenced to 10½ years' imprisonment by the Superior Number. 2. In future it will be helpful if the Court that deals with the issue of confiscation subsequent to conviction is the trial court, i.e., the presiding Judge and two Jurats who determined the trial. It is important that those who heard the evidence at trial are able to participate not only in sentencing but also in any confiscation hearing, if possible, because there may be (and were in this case) disputed issues of fact which could only be resolved by those who heard the evidence at trial. Further, there was a dispute as to the basis upon which the guilty verdict was returned; this issue only arose during the confiscation hearing and accordingly it was too late to seek a ruling from the trial Court under Article 50 of the Criminal Procedure (Jersey) Law 2018 . 3. The defendant in this case also gave evidence at his trial. By reason of his subsequent conviction by the Jurats it is axiomatic that his evidence was rejected either wholly or in part. It would have been helpful for the Jurats who heard the evidence of the defendant at trial to have been presiding when the defendant gave evidence for the purposes of this confiscation hearing. 4. With these remarks in mind, we turn to the facts of this case and the nature of the dispute between the parties today. The summary of facts prepared for the purpose of the sentencing hearing recorded that the defendant offered another man called Fernando Costa - who has subsequently been convicted and sentenced - 310 grams of cocaine of which 154 grams were supplied. The summary of facts stated, " Where there was ambiguity this was resolved in favour of the defendant and therefore some of the balance of 156 grams may have been supplied ". The estimated value of the cocaine for street dealing purposes at the relevant time was between £100 and £200 per gram. 5. We were informed that owing to an arithmetical error made by the Crown, Fernando Costa was sentenced on the basis of his involvement with 144 grams (and not 154 grams) of cocaine, and that is supported by paragraph 5 of the judgement of 10 th January 2022 given by the Bailiff in the case of Costa which refers to supply of " at least 144 grams " (AG v Costa

[2022] JRC 003). Accordingly, although the judgment in this case is not yet to hand, we are told and proceed on the footing that this defendant was sentenced on the same basis. The Crown said that the defendant, for the purpose of the confiscation hearing, ought to have

been considered to have offered to supply 310 grams, and actually to have supplied 154 grams. We were poorly placed to resolve this matter as we were not present during the trial and accordingly, we felt obliged to proceed on the basis that the calculation of the defendant's benefit arising directly from the drug trafficking offence must be limited to the street value of the cocaine on the basis of 144 grams supplied, resulting in a benefit of £14,400 and not the £31,000 initially contended for by the Crown. 6. The evidence we heard was largely, indeed almost exclusively, related to the unexplained, on the Crown's version, transactions revealed by the defendant's Monzo account which was discovered in the course of the investigation - the defendant having said in interview that he only had a Revolut account when questioned. The Monzo account was active between 20 th July 2018 and 4 th September 2019. 7. Prior to considering the evidence, it is helpful to note the relevant statutory provisions contained in the Proceeds of Crime (Jersey) Law 1999 ("the Law"). Article 5(5) provides that for the purpose of ascertaining a defendant's benefit for the purpose of confiscation the Court may make certain assumptions in relation to the property held and expenditure by the defendant during the relevant period (which is six years prior to the prosecution). Article 5 provides: "5 Confiscation order relating to a course of relevant criminal conduct (1) This Article applies for the purposes of Article 3 where a defendant appears before the Court to be sentenced in respect of a qualifying offence - (a) if the Attorney General asks the Court to apply it for the purposes of that Article; or (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so. (2) An offence is a qualifying offence for the purposes of this Part if it is an offence in respect of which all of the following conditions are satisfied, namely - (a) it is an offence specified in Schedule 1; (b) it is an offence committed after this Article comes into force; and (c) the Court is satisfied that it is an offence from which the defendant has benefited. (3) The relevant period for the purposes of this Article, in relation to a defendant, is the period of 6 years ending when the proceedings in which this Article applies were instituted against the defendant. (4) When this Article applies for the purposes of Article 3, the Court may if it thinks fit (but subject to paragraph (6)) make the assumptions in paragraph (5) for the purpose - (a) of determining whether the defendant has benefited from relevant criminal conduct; and (b) if the defendant has, of assessing the value of the defendant's benefit from such conduct. (5) Those assumptions are - (a) that any property appearing to the Court to be held by the defendant at any time since the date of the defendant's conviction, or appearing to the Court to have been transferred to the defendant at any time since the beginning of the relevant period - (i) was received by the defendant at the earliest time when he or she appears to the Court to have held it, and (ii) was received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; (b) that any of the defendant's expenditure since the beginning of the relevant period was met out of payments received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; and (c) for the purposes of valuing any property that the defendant had or is assumed to have had at any time, that the defendant received the property free of any other interests in it. (6) The Court shall not make an assumption in

paragraph (5) in respect of any particular property or expenditure - (a) if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect; (b) if the assumption, so far as it relates to that property or expenditure, is shown to be correct in respect of an offence from which the defendant's benefit has been the subject of a previous confiscation order or instrumentalities forfeiture order; or (c) if the Court is satisfied that, for any other reason, there would be a serious risk of injustice if the assumption were made in respect of that property or expenditure. (7) Where the assumptions in paragraph (5) are made the offences from which, in accordance with those assumptions, the defendant is found to have benefited shall be treated as if they were comprised, for the purposes of this Part, in the conduct that is to be treated as relevant criminal conduct by the defendant. (8) In this Article, the "date of the defendant's conviction" means - (a) in a case not falling within sub-paragraph (b), the date on which the defendant is convicted of the offence in question; and (b) where the defendant is convicted of that offence and one or more other offences in the proceedings in question, and those convictions are not all on the same date, the date of the latest of those convictions." 8. Pursuant to Article 5(6) the Court is not to make the assumptions in Article 5(5) in respect of any particular property or expenditure if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect. It is for the defendant to prove to the civil standard that the assumptions should not apply and it was accepted on behalf of the defendant today that the burden falls upon him to prove any explanations that he gives so as to displace those assumptions. 9. As to the pre-hearing material filed by the parties, the Attorney General provided a statement as provided for by the Law on 10th March 2022. The defendant responded by providing documentation on various dates including 7th April, 24th May and 1st June 2022 which led the Crown to revise its position and accept certain of the defendant's explanations as to the transactions revealed by the relevant accounts, including all the explanations proffered in relation to the defendant's Revolut account. In respect of the Monzo account, on 7th April 2022 the defendant listed a number of transactions that had been questioned by the Crown and said " if these are not accepted, he [the defendant] can see little alternative but to contact each of the individuals and to seek direct from them any clarification which they can provide ". In fact, as we will come to shortly, this did not occur and there is no independent evidence from any of the individuals identified from the Monzo account in relation to the particular transactions of concern. 10. As to the correspondence between the parties and the stance adopted by the Attorney General, Article 7(10) of the Law provides: "Where - (a) there is tendered to the Court by the defendant a statement as to any matters relevant for the purpose of determining the amount that might be realised at the time the confiscation order or instrumentalities forfeiture order is made; and (b) the Attorney General accepts to any extent any allegation in the statement, the Court may , for the purposes of that determination, treat the acceptance by the Attorney General as conclusive of the matters to which it relates." (our emphasis) 11. Accordingly, the Court is not obliged to accept the Attorney General's acceptance of the defendant's assertions for the purpose of the determination of benefit. It became clear to the members of the Court during the hearing

that some of the concessions made by the Attorney General, particularly in respect of transactions in the defendant's Revolut account, were or may have been too generous to the defendant but, having regard to the amount that may be realised in this case and the need for the length of the hearing to be proportionate to the amounts in issue the Court elected not to reopen those matters in order to consider them further and make its own determination. 12. The principal matter in dispute, the defendant accepting that the value of the drugs supplied by him were (as was bound to be the case) property received by him as a result of or in connection with the commission of the offence, was the value of unexplained transactions in the Monzo account referred to above. The payments into this account during the period in question totalled £32,120. 13. The defendant gave certain explanations in relation to these transactions which were accepted by the Crown, leaving £17,110 unexplained. As to the explanations given by the defendant on affidavit in respect of the transactions in the Revolut account, we note that the Crown say that 60% by value of those payments were accounted for by invoices supplied by the defendant principally in the course of his business dealing with cars and valeting cars. 14. As to the transactions that remained unexplained so far as the Crown was concerned prior to the hearing, the defendant gave evidence before us and purported to explain every single one of those transactions. It is not necessary for us to examine in this judgment all of the transactions as they related to just over a dozen individuals and in relation to most of those individuals there was more than one transaction. For example, in relation to an individual Mr Cauvain whom the defendant described as his friend £720 was received. This consisted of six separate payments of £120 that the defendant said was for cleaning Mr Cauvain's car and his bike and his mother's bike - by which the defendant meant motorbike. The defendant also received three payments from another individual Mr Lines in a short period, each totalling £240. Again, he said this was for valeting cars. He said a Mr Gomez made 10 separate payments from time to time in order to pay the defendant £2,245 for a motocross bike purchased from him. He said people never use paperwork for motocross transactions. A Mr Rainbow paid him £5,400 he said for a boat engine in 17 sporadic instalments from time to time. As we have said, it is not necessary for us to set out all the payments or the explanations provided. Most were claimed to relate to valeting cars. None were supported by an invoice, an email or indeed any paperwork of any sort from any of the supposed customers. 15. Of great significance to the members of the Court was the amounts involved. We observed from the text messages passing between the defendant and Mr Costa that, for example, on 8 th May 2019, the defendant agreed to supply Mr Costa with 12 grams of cocaine for £1,200 i.e., £100 per gram. Subsequently he referred in a message to Mr Costa to " 120 mate on the single pop " which the defendant in evidence accepted referred to the price when he sold a single gram i.e., £120. Many of the transactions that the defendant purported to explain in evidence were receipts of between £100 and £200 representing payments (in our view) for 1 or 2 grams of cocaine. For example, on 16 th August 2019 he received £120 from Mr Cauvain and £100 from Mr Rainbow. On 23 rd June 2019, he received £120 from Mr Costa, and £240 on each of the 13 th April, th April, and 18 th April 2019 from Mr Lines. Mr Lines was plainly buying 2 grams

of cocaine from the defendant each time and not having his car valeted again and again and again. On 13 th April 2019 the defendant received £240 from Mr Lines, £120 from Mr Costa and £120 from Mr Moore. 16. We had no hesitation in rejecting the defendant's evidence, save the account he gave in relation to the £2,000 he received from Mr Hamilton on 31 st August 2018. The defendant said that he had received this money as a consequence of the sale of a red Subaru Impreza from the gentleman in question who owned a garage on Trinity Hill and whom the defendant described as " respectable ". This transaction was a one-off payment of a significant amount and different in quantum and nature from the other payments before us, and there was evidence that Customs and Immigration had considered similar transactions in relation to motor vehicles and concluded that they were genuine. Accordingly, we found that it was incorrect to hold that the assumptions applied to this specific transaction, but to no other of those which the Crown described as unexplained. 17. Therefore, we hold that the defendant's benefit from criminal conduct in respect of the payments into the Monzo account totals £15,110. Finally, as to the cash seized from the defendant upon his arrest in the sum of £125, it was not challenged that this sum was also connected to the defendant's offending and should form part of the calculations of the property held or obtained by him in connection with his criminal conduct. Accordingly, the benefit from offending is certified by the Court pursuant to Article 4 of the Law in the sum of £29,635. 18. As to the amount that might be realised and recovered from the defendant, that consists of the cash seized on arrest and various items restrained under a Saisie Judiciaire totalling £2,175. We order pursuant to Article 17 of the Law that the Viscount should be permitted to realise those assets and that the recoverable amount be paid into the Criminal Offences Confiscation Fund and that on satisfaction of the confiscation order the Saisie Judiciaire be discharged. Authorities Criminal Procedure (Jersey) Law 2018. AG v Costa

[2022] JRC 003 . Proceeds of Crime (Jersey) Law 1999 Page Last Updated: 20 Jun 2022 Back to top About JLJB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2022/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-ferguson-2022-jrc-124-09-june-2022>

Prepared on 28 October 2026 · Esheria