

JERSEY / JUDGMENT

AG -v- James [2013] JRC 085 (03 May 2013)

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JUDGMENT

THE BAILIFF: 1. These are disciplinary proceedings concerning Advocate Carly James ("the respondent"). On 11th January, 2013, she pleaded guilty to one count of being concerned in the supply of a Class B drug, namely cannabis resin, for which she was fined £600 in the Magistrate's Court. 2. In most circumstances, a conviction for being concerned in the supply of controlled drugs will inevitably lead to an advocate being struck off. But it is said that the circumstances of this offence are highly unusual and that the Court should not impose such a severe penalty. The facts 3. There is no dispute as to the facts which we find to be as follows. 4. The respondent is 31 and was born and educated in Jersey. She obtained a law degree from Kingston University and subsequently the LPC from the College of Law, Chester. She returned to Jersey in 2005 and joined Appleby. She has worked mainly in the family law department. She was sworn in as an advocate of this Court on 6th October, 2011. 5. She met a man ("the partner"), who is some nine years older than her, approximately 6½ years before her arrest on 11th September, 2012, and they began to live together about one year later in an apartment purchased in the respondent's sole name. 6. It appears that, despite living together, they lived comparatively separate lives and did not generally share close friends or socialise frequently with joint friends. 7. She says that she was aware that the partner occasionally smoked cannabis when he was with his friends. She said that he did not do it in her presence or in the flat. She says that she told him she did not approve and she made her feelings clear to him. It was a point of contention in their relationship and was therefore something that, in the main, he kept from her. 8. On 11th September, 2012, the police executed a search warrant at the flat. They found 156g of cannabis with a retail street value of between £1,700 and £2,500. The respondent asserted at the time and continues to assert that she had never seen this cannabis before. This is accepted by the Attorney-General. She and the partner were arrested and charged with possession of the cannabis. 9. The respondent immediately moved out of the flat and returned to live with her parents where she has remained since then. She ended the relationship with the partner. 10. During the search, the respondent's mobile phone was seized and the police recovered texts from her phone which suggested that she had been concerned in the supply of controlled drugs to a friend. 11. It would appear that a female friend of hers texted the respondent on two occasions in May 2012 requesting some "pizza", which it is acknowledged was a code name for cannabis. It is accepted that the respondent did not ask the partner to supply any cannabis on either of those occasions, although unfortunately she did not reject the request out of hand; she replied along the lines that she had been unable to find any "

pizza " (on the first occasion) or had not yet been able to check with " pizza man " (on the second occasion). 12. Finally on 25th July the friend texted again saying "Can you ask davy about the pizza". The respondent replied indicating she could supply £50 worth. There were then certain further exchanges from which it is clear that a certain amount of " pizza " had been supplied. It is accepted by the Attorney-General that the amount in fact supplied by the partner to the friend was £10 worth. 13. The respondent was arrested on 23rd October, 2012, on suspicion of being concerned with the supply of cannabis. She made no comment when interviewed under caution and was charged on 15th November before the Magistrate's Court. She pleaded not guilty. 14. Subsequently, on 11th January, 2013, she pleaded guilty to an amended charge which confined the date of supply to a single instance on or about 27th July, 2012. As already mentioned, she pleaded guilty and was fined £600. Her not guilty plea to the possession charge in relation to the cannabis found in the flat was accepted. 15. The background to the offence was explained to the Magistrate and has been explained to this Court in Miss James' affidavit. She states that the friend and her husband smoked cannabis occasionally and they were aware that the partner also smoked cannabis. They were also aware that the respondent disapproved and is not a cannabis user. Nevertheless, in May 2012 the friend asked the respondent to ask the partner if he could get her husband a small amount of cannabis. Despite the fact that her text in response implies that she had asked the partner and that he could not get any cannabis, the respondent asserts that this was not actually the case and she did not ask the partner for assistance. But rather than simply admit that she was unwilling to help, she adopted this approach because she thought it might put the friend off. It did not, as the friend made a further request on 23rd May. Again the respondent did not in fact ask the partner about any cannabis, although she replied to the friend simply stating that she would check on his return as he was out. However, when the friend approached her again in July, she replied positively. She approached the partner and he supplied approximately £10 worth of cannabis to the friend. The respondent had no involvement in the supply itself; her role was limited to acting as intermediary and passing on the request from the friend to the partner. She received no financial benefit from the transaction and the actual supply was by the partner to the friend. 16. The Court accepts that, so far as offences of being concerned in the supply of controlled drugs go, this must be at the very bottom of the scale in terms of gravity given the limited involvement of the respondent and the very small amount of Class B drug supplied. Nevertheless, any offence of being concerned in the supply of controlled drugs is serious and for an advocate to commit such an offence is a serious breach of an advocate's duty to uphold the standards of the profession.

Submissions

17. The Attorney-General reminded the Court of the observations in *Bolton-v-Law Society*

[1994] 1 WLR 512 and referred also to various disciplinary decisions in England and in Scotland in connection with the possession or supply of controlled drugs. Having done so, he moved that the appropriate sanction in this case would be suspension for a period of six months. 18. Advocate MacRae emphasised the limited nature of the offence committed by the respondent. The police had analysed all the respondent's text messages (some 3,500 in

number) over the year prior to her arrest and had not found anything which indicated involvement with drugs. Her sole involvement was that she had passed on a request from her friend for a small amount of cannabis to her partner and he had then supplied £10 worth of cannabis to the friend. She had merely been the link to pass on the request. She herself was not a cannabis user and disapproved of it. She bitterly regretted her involvement and was full of remorse. He explained how she had long displayed an interest in law and that her swearing-in as an advocate on 6th October, 2011, had been the proudest day of her life. She worked exclusively in the area of family law which was an area where she felt she could give advice and assistance to clients who were often facing emotional and difficult times in their lives. She was motivated in her professional career by a desire to help others and that area of law enabled her to do this. 19. He referred to the many glowing references, including a number from senior members of Appleby, which firm had stood by her since her arrest. The references spoke of her enthusiasm, dedication, hard work and integrity. 20. He then turned to consider the various decisions referred to by the Attorney-General but contended that a number of these supported his case that a reprimand and/or a fine would be sufficient. He also referred to the fact that over the last few years, two senior advocates had been convicted of driving a motor vehicle with excess alcohol but they had not been brought before the Court. He submitted that this showed an inconsistent approach. 21. In summary, he submitted that this was the least serious case one could imagine of being concerned in the supply of a controlled drug. It had been committed by a young advocate of otherwise unblemished character who was highly thought of and who was just setting out on her career. He urged the Court to proceed by way of public reprimand or at worst a fine so that she could continue with her chosen career. Decision 22. The Court accepts that it should proceed on the respondent's version of events as set out above. This was a one off supply and her role was limited to passing on the request to the partner as set out above. Having said that, it was the third time that the friend had made this request and it is hard to understand why the respondent did not simply say on the first occasion that she was having nothing to do with such a request. She was an advocate and she knew the serious view which the Court takes of any offence of supplying or being concerned in the supply of controlled drugs. 23. Turning to the previous decisions referred to, a number of them were very different in that they related to the supply of substantial quantities of class A drugs for which, not surprisingly, the lawyer in question was struck off. The only ones which provide some assistance are as follows. 24. In O'Connor (2011) a Scottish solicitor went to a public house where he met up with a group of persons, one of whom was Mr A, whom the solicitor had not met previously. Whilst in the pub the solicitor purchased some cocaine from the group which included Mr A. He then invited Mr A and the rest of the group back to the premises of his firm where, after their drugs ran out, he shared some of the cocaine he had purchased that evening for his personal use with members of the group. Mr A later became unwell due to the combination of drink and drugs and died the next morning. However, the post mortem and toxicology reports determined that any cocaine supplied by the solicitor did not cause the death of Mr A. The solicitor, when interviewed, made full

admissions and pleaded guilty to supplying a controlled drug to another for which he was given a community service order. At the disciplinary hearing, he was censured and fined £10,000. 25. Mostyn (2012) was an English barrister who was in possession of cocaine and ecstasy. The disciplinary tribunal reprimanded him and fined him £250. 26. In McBride (2012) a barrister was found in possession of cocaine. He was subsequently cautioned by the police. The disciplinary tribunal reprimanded him and fined him £1,000. 27. In Green (2011) a barrister drove a vehicle after consuming excess alcohol and was found in possession of cocaine. He was reprimanded and fined £1,000. 28. Finally in Edmonds (2011) a barrister drove a vehicle after consuming excess alcohol and was found in possession of cannabis. He was reprimanded and fined £400 as regards the motoring offence with no further action concerning the possession charge. 29. In our judgment, each of these cases involved a less serious drug offence than that of the respondent. So far as O'Connor is concerned, it was a case of social supply whereas the respondent in this case was concerned in a commercial supply, albeit of a very small amount. As to the four other cases, they all involved mere possession of a controlled drug with no element of supply. 30. In any event, as the Attorney-General pointed out, it is the case that the Royal Court takes a stricter line on the supply of controlled drugs than do the English courts and accordingly penalties imposed by disciplinary tribunals in the United Kingdom are of limited assistance. Given the seriousness with which the Royal Court treats offences of supplying controlled drugs, advocates and solicitors must appreciate the seriousness of becoming involved in such conduct. 31. As to Advocate MacRae's point concerning the two senior advocates who were not brought before the Court for offences of driving a motor vehicle with excess alcohol, the Court has no information about those offences and in any event a wrong decision not to refer a previous case does not mean that the Court should on this occasion do anything other than impose the correct sanction for this particular offence. We do however invite the Attorney-General to consider the relevant procedures so as to ensure that any criminal offence by an advocate or a solicitor is brought to his attention so that he can determine whether the matter should be brought before this Court. 32. In the cases of AG-v-Michel

[2012] JRC 099 and AG-v-Begg

[2012] JRC 209 this Court endorsed the observations of Sir Thomas Bingham MR in Bolton and we would refer in particular to the passage at page 519 of that case:- "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. ... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence

that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension has passed. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price." 33. We have carefully considered the powerful mitigation put forward by Advocate MacRae. We note the limited nature of the respondent's involvement in the offence and the evidence as to her good character from the glowing references which we have read. We acknowledge the effect that this has had on her and the risk that a suspension may have as to her future prospects. Nevertheless, by a majority, the Court has concluded that a reprimand or a fine - and Article 26(h) of the Law Society of Jersey Law 2005 provides that only one such sanction may be imposed - would be insufficient to uphold the dignity and reputation of the profession. An advocate is an officer of the Royal Court and the commission of an offence of the gravity of being concerned in the supply of a controlled drug cannot be regarded so leniently. 34. However, in view of the matters put forward by Advocate MacRae and the fact that it is hard to imagine a case of being concerned in the supply of controlled drugs which is further down the scale of seriousness, the Court concluded that a period of two months' suspension would meet the justice of the case. Accordingly that was the disciplinary penalty which was imposed at the conclusion of the hearing on 19th March. *Authorities Bolton-v-Law Society*

[1994] 1 WLR 512 . *AG-v-Michel*

[2012] JRC 099 . *AG-v-Begg*

[2012] JRC 209 . *Law Society of Jersey Law 2005*. Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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