

JERSEY / JUDGMENT

AG v Silbourne [2022] JRC 222 (19 October 2022)

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JUDGMENT

THE COMMISSIONER: 1. On 11 th October 2022, the Court sentenced the Defendant to 6 years youth detention, giving brief reasons for that sentence. In addition, the Court postponed the application for a confiscation hearing until 10 th November 2022 at 10am and gave directions as to the position statements to be filed by the Attorney General and the Defendant in relation to the Attorney General's statement. This judgment contains the reasons for the Court's decision on sentence. 2. The Defendant pleaded guilty to a charge of being knowingly concerned with the evasion of the prohibition on the importation of a controlled drug namely cocaine, contrary to Article 61 of the Customs (Jersey) Law . The cocaine was concealed under the boot lining of a grey Range Rover Evoque in a green plastic bag. The Defendant was driving the vehicle, having travelled from Poole to Elizabeth Terminal by ferry. His partner was a passenger in the car. On being stopped by a Customs and Immigration officer, the Defendant and his partner told the officer that they had booked their travel the previous night and would be staying at The Inn Hotel. The Defendant stated that neither he nor his partner knew anyone in the island and the couple confirmed that they were aware of the contents of the car, which was registered to the Defendant, and that they had packed it themselves. They also confirmed that they were not bringing anything for anyone in Jersey and that they were aware of the prohibitions and restrictions in force in relation to controlled drugs. The car was then searched and the drugs were found. 3. The cocaine was subsequently weighed and analysed. The powder weighed 999.98 grams and had a purity of 75%. The expert evidence was that cocaine is often pressed into one kilogram blocks for ease of distribution, but at street level is often encountered at low purity levels when compared to that encountered from significant law enforcement border seizures. The latter seizures usually disclose an average purity of between 60% and 80%, whereas inland seizures further along the chain of supply show an average purity of between 15% and 40%. Thus it is clear that the drug is susceptible to adulteration, and that high quality cocaine will often be adulterated to around twice to four times its original purity. Cocaine is typically sold in gram or half gram units at street level and the price will vary between £120 and £220 per gram depending on the quality. In this particular case, the cocaine imported by the Defendant could on a street sale be expected to provide in weight between two and four times the weight of the cocaine seized. 4. The mobile phone belonging to the Defendant was seized and the Defendant was cooperative in providing his

password. A review of the text messaging on the mobile phone in question showed the Defendant to be involved in the supply of herbal cannabis but though he was asked twice if he could supply cocaine, he did not respond. There were no messages suggestive of him being directly involved in the supply of cocaine. 5. The Defendant, who was 20 at the time of the offence and turns 21 next February, was interviewed under caution on the day of his arrest and provided 'no comment' answers to all questions. On 2nd June 2022, at a further interview, his advocate read out a pre-prepared statement on his behalf. In that statement the Defendant admitted that he was aware he was importing cocaine and he absolved his partner from any knowledge of that importation. He stated that, ten days prior to travel, he was approached by an unnamed man to take one kilogram of cocaine to Jersey. Initially he had refused, but, under duress by the unnamed man who, he said, had groomed him since he was 16 years old, and to whom he owed a six figure debt, he ultimately agreed to make the importation. The unnamed man placed the drugs in the vehicle, booked the ferry and the hotel using the Defendant's bank card. The Defendant had been instructed to drive to The Inn Hotel and leave the car unlocked. A third party would collect the drugs from the car. In return for the importation, the Defendant was to receive £3,000 in cash and his overall debt would be reduced by a further £7,000. 6. The wholesale value of the cocaine would have been in the order of £84,000 to £105,000 and the street value, absent any adulteration, £120,000 to £220,000. However, assuming adulteration by two-thirds or three-quarters, then the potential wholesale value would have been £252,000 to £420,000 and the street value £360,000 to £880,000. 7. Because the Defendant is aged 20, the provisions of the Criminal Justice (Young Offenders) (Jersey) Law 2018 applied to him. 8. Article 4 of the 1998 Law provides that a Court shall not pass a sentence of youth detention unless Article 5 of the Law applies, or, where it does not apply, where the Court considers that no other method of dealing with the person is appropriate, for any of the reasons set out in Article 4(2)(b). In our judgment, this case is covered by Article 5 because by Article 5(3) the offence is punishable with imprisonment for 14 years or more and the Court is of the opinion that none of the other methods in which the case might legally be dealt with is suitable. In any event, the Court considers that the case is covered by Article 4(2)(b)(iii) because the offence is so serious that a non-custodial sentence cannot be justified. 9. For these reasons, the custody threshold in relation to the importation of a kilo of cocaine being passed by a clear margin, the only question is the length of the period of youth detention. 10. In that respect, the Court is guided by the case of *Rimmer v AG*

[2001] JLR 373, which requires the Court to assess the degree to which the Defendant was concerned in drug trafficking when deciding upon a starting point for the purposes of calculating sentence. The quantity of the drugs in question remains a major factor in choosing the starting point for calculating sentences and in the case of Class A drugs in powder form, their weight was an appropriate measure of quantity. Where the consignment was of such a high degree of purity (for example greater than 75%) that it was much more likely to be 'cut' or adulterated, that could be taken into account. Given the expert evidence, we are satisfied to the criminal standard that this consignment of cocaine would have been adulterated for sale on the street. 11. According to the *Rimmer* scale, where the weight of the drugs is equal to or in excess of 400 grams, the starting point

should be 14 years or more. 12. In this case, having regard to the weight and purity of the drugs and to the role of the Defendant, we consider the right starting point to have been 16 years youth detention, as moved for by the Crown. It is true that the Defendant was a mere courier - and we use that expression only to distinguish his role from that of the more sophisticated drug trafficker, but not to diminish the role because the importation could not have taken place without his assistance. 13. We then considered the Defendant's personal mitigation. It went to his credit that he had very swiftly exonerated his partner from any participation in the importation. He had pleaded guilty, and, given that there was nothing which would identify him with the drugs other than the fact that he had driven the car in which they were found, there being no fingerprints or other evidence in that respect, the guilty plea was a valuable one, and we considered that he should have a full discount of one third. He had been cooperative with the prosecution authorities by providing his bank details and password for his mobile telephone. He had given a candid account of what had taken place to the probation officer. These factors all stood to his credit. 14. On his behalf, Advocate Miere also submitted that the Defendant had been groomed into this lifestyle by his supplier, who had effectively provided him with accommodation from the age of 16 and over a period of time not only assisted him with the supply of drugs for his use but also taught him how to trade in cannabis. The relationship between the Defendant and his supplier was said to be a close one on a personal level; such that indeed the Defendant might think of his supplier with the same affection as he would a member of his family. Advocate Miere rightly submitted that the Young Offenders Law contained the provisions it did in relation to the sentencing of young offenders because there is implicit in the legislation a recognition that young people are sometimes immature and impulsive; and as a consequence make decisions which they would not otherwise have made, had they had more experience. Courts should and do take these features into consideration, and that was particularly relevant here. In its conclusions, the Crown overlooked the fact that the Young Offenders Law applied, but did suggest the Defendant was entitled to some mitigation for his youth; and for the avoidance of doubt, whilst we agree that his youth is to be taken into account, we do so for the reasons Advocate Miere submitted; and, although there is no independent evidence of grooming, we have accepted on the balance of probabilities that such grooming took place, and that it affects the personal mitigation upon which the Defendant is entitled to rely in submissions to the Court. 15. Notwithstanding the close nature of the personal relationship, the Defendant submitted through his counsel that he was frightened of his supplier and that he carried out the importation out of fear for his own safety and that of his family if he did not. We have not taken that into account. Grooming or not, as a matter of policy the Court does not take into account threats which are made against the Defendant or his family. The fact that we have accepted that grooming took place does not mean that we have accepted that there were threats made. As a general rule it is difficult if not impossible for the Crown to disprove an assertion that the Defendant was acting under fear of this kind and the authorities are clear that this is not a feature which a sentencing court should take into account. 16. The Defendant has shown that he is remorseful and

has provided some good references. We have made some allowance for good character as a result of the absence of previous convictions, albeit that is qualified by the fact that the Defendant acknowledges having trafficked in cannabis since he was 16. 17. Taking all these matters into account, and but for one further matter to which we will now come, we would have sentenced the Defendant to 9 years youth detention, that is to say allowing personal mitigation of 7 years from the starting point. We cannot emphasise enough that the importation of class A drugs such as cocaine is a very serious offence and is so treated by this Court. In this case the quantity imported, with its purity at 75% such that it was likely to be adulterated, would have caused enormous damage in this island, ruining people's lives. Nine years youth detention would in our judgment have been entirely appropriate. 18. The additional factor however is that the Defendant has named his supplier to the authorities who have carried out sufficient enquiries as a result to be satisfied that what the Defendant has said is truthful. He has in fact provided information which is new and which may lead to further investigations and possibly to one or more arrests and convictions. In Court, on his behalf, Advocate Miere confirmed that the Defendant was willing to give evidence in any such prosecution. 19. This is very significant mitigation. The Court wishes to encourage defendants to provide information of this kind because it is an important tool in the armoury which the law enforcement authorities have for the purposes of fighting drug trafficking. The Court recognises that there can be dangers to a defendant or his or her family in making such information available and no doubt that is the reason why on many occasions a defendant does not provide that information. Much credit therefore is to be given to the Defendant in this case. 20. There was some discussion in Court as to whether it matters if the name of the supplier is actually given out in public. Advocate Miere told us that his instructions were that he was prepared to do so if the Court so required it, but the case of *AG v Miah*

[2002] JRC 210 suggests that it is not necessary to do so. At paragraph 4 of the sentencing remarks the Court said this: "Advocate Fogarty says that there is a difference between actually articulating the name of the supplier in open court on the one hand, and giving the name and information to the police and acknowledging that that is what has been done, on the other hand. She relies upon a sentence in the case of *Bray v Attorney General* (27 January 2000) Jersey Unreported C of A: [2000/16], a decision of the Court of Appeal. We have to say that we see no such distinction. What the court is concerned to encourage is the provision of information to the police so that they can progress investigations against other people, coupled with an acknowledgment in open court so that others can be encouraged to behave in a similar fashion in the knowledge that a substantial discount in the sentence will follow. Whether the actual name of the alleged supplier is stated in open court is irrelevant to this process. We do not think that the sentence in the judgment in *Bray* was meant to suggest otherwise." 21. We have not received full submissions on this particular point because, on behalf of the Attorney General, Crown Advocate Carvalho submitted that the Crown would prefer the supplier not to be named in open court. In those circumstances we did not insist upon Advocate Miere doing so, and we have given

the Defendant full credit as if he had named the supplier in open court. We do not wish to express any firm opinion one way or another as to whether we would take the same view as was taken in the case of Miah . However, it seems to us that there may be advantage in naming a supplier in open court because the media are then able to publish the name of that supplier. Of course, a responsible media will want to be satisfied that the prosecuting authorities not only have no objection to the publication of the name but are also reasonably satisfied that the defendant has truthfully named the supplier. We can see that there might be some advantage in naming the supplier in court in circumstances where that person is a resident of the island and young people - such as the Defendant in this case - might take note accordingly in their dealings with him or her. We make these remarks only because the situation appears to us to be potentially complicated and we would have preferred to have received full submissions before endorsing the Court's comments in Miah which have been referred to above. 22. Having regard to the information which has been provided by the Defendant, acknowledged by the Crown as being useful, and which is said to result in further investigations taking place, and having regard to the assurance given to us by Advocate Miere on behalf of the Defendant that he is prepared to give evidence in any prosecution which follows, we think that the Defendant is entitled to ask for a substantial discount against the sentence which would otherwise be imposed. For this reason, we are reducing the sentence from 9 years to 6 years youth detention. 23. In addition, we order the forfeiture and destruction of the drugs. Authorities Customs (Jersey) Law 1999. Criminal Justice (Young Offenders) (Jersey) Law 2018. Rimmer v AG

[2001] JLR 373 . AG v Miah

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