

JERSEY / JUDGMENT

Bruton v AG [2000] JCA 136 (14 July 2000)

[2000] JCA 136

COURT
COURT OF APPEAL

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COURT OF APPEAL

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July, 2000

Before: The Hon. M. J.

Beloff, Q. C., President,

de

V. G. Carey, Esq., Bailiff of Guernsey and

C. S. C. S.

Clarke, Esq., Q. C.

Darren William BRUTON

-v-

The Attorney General

Application

for leave to appeal against a

total

sentence of 11 years' imprisonment

passed on 27th April, 2000, by the

Superior Number of the Royal Court, to which the Applicant was remanded by the

Inferior Number on 25

th

February, 2000, following
a guilty plea to:

2 counts of:
being
knowingly concerned in the fraudulent evasion of the prohibition on the
importation of a controlled drug, contrary to Article 77(b) of the
Customs
and Excise (General Provisions)(Jersey), 1972
:
count
1: MDMA, on which count a sentence of
years' imprisonment
was passed.
count
2: cannabis resin, on which count a sentence of
3 years' imprisonment, concurrent
,
was passed.
[A co-accused, who has not
appealed, was sentenced on count 1 to 5 years' imprisonment and on count
2 to 3 years' imprisonment, concurrent.]
Application
for leave to appeal placed direct before the plenary Court without its being
first submitted to a Single Judge in Chambers for determination without a
hearing.
Advocate
D. J. Benest for the Applicant;
Mrs. S. Sharpe,
Crown Advocate.

JUDGMENT

CAREY, J. A: 1. This is the judgment of the Court on the application for leave to appeal against sentence of Darren William Bruton who appeared before the Superior Number of the Royal Court on the 27 th April, 2000, after earlier tendering to the Inferior Number guilty pleas on two counts of importation of controlled drugs. 2. The circumstances were somewhat unusual in that the Applicant was indicted jointly with another man called McGrath albeit that, when the case was presented to the Court, their cases were dealt on an individual basis as the Crown did not (on the accuseds' application) proceed with a suggestion that they were engaged in a joint enterprise. The facts surrounding this matter are relatively straightforward. 3. On Saturday morning, the 25 th September, 1999, Customs Officers were on duty at the Airport clearing the flight from Stansted. Two passengers attracted their attention. The first was McGrath who was found to have what turned out to be controlled drugs in a black holdall which was contained inside his luggage. The Customs found cannabis resin to a weight of 2.95 kilograms in his holdall, together with the equivalent of 5,048 MDMA (Ecstasy) tablets. They went on to stop the Applicant and he, too, had a holdall in which an almost identical amount of cannabis and ecstasy was found, that is to say 2.92 kilograms of cannabis resin and 4,948 ecstasy tablets of which 193 were broken up. The wrapping on the consignments was similar and there is no doubt that the two consignments originated

from the same supplier. As we have indicated there was however nothing to otherwise show the two couriers were acting in concert and in the end the Crown proceeded on the basis that these were two separate importations albeit that they were still of sizeable amounts both of cannabis and MDMA. This of course meant that the amount that each courier was involved in importing was accepted by the Crown (and by the Court) as less than it would have been if there were a joint operation. 4. So far as the Applicant is concerned, he was not immediately forthcoming in any useful way with the officers who interviewed him. He said he was travelling on his own from Stansted and he was in Jersey for a few days to visit his girlfriend at the Norfolk Hotel. He gave his name (falsely) as Robert Anthony Duggan and produced an air ticket and birth certificate in that name. He had also completed a landing card in that name. It was subsequently established that he was in fact Darren William Bruton. When the packages were discovered the Applicant denied knowing what was in them. He said that he packed his bag, travelled to Stanstead Airport and gone to sleep for three quarters of an hour, during which time his bag was unattended. He could offer no explanation as to how the packages came to be in the holdall, other than to suggest that somebody must have put them in the bag when he was asleep. 5. He said he used the false name Duggan because he had previously been convicted of attempted armed robbery. It was his first visit to Jersey and when he was asked why he should have Jersey money in his possession he gave a somewhat novel explanation that he had changed the money at the Bureau de Change at Stansted Airport, a claim that was not surprisingly disproved since it could not in fact have happened. 6. Both McGrath and the Applicant were dealt with on the same day. At the outset of their trial the Crown, in offering its conclusions, suggested that they be dealt with in a somewhat different way. Both men were of the same age. McGrath had been involved with drugs since he was 22. He had a number of convictions when he was a young person, but since then he had a clean record except for a recent conviction for drunk in charge. 7. The Applicant had a distinctly worse record in that he was still on licence from a sentence of five and a half years' imprisonment imposed in 1995 in respect of armed robbery. He had been released on licence on the 31 st December, 1998, and his sentence was due to expire on the 18 th August, 2000. 8. The Crown accepted the Court should proceed to sentence on the basis that the two were not involved in a joint enterprise despite their pleas to a joint charge. The Crown recommended sentences from a starting point of fourteen years. In Bruton's case this was to be reduced by two years for the guilty plea although it was a submission of the Crown there was little option for the Applicant but to admit his guilt. What further little mitigation there was entitled him to a further year's deduction only. It was pointed out that he had a bad record, had provided a false identity and had not co-operated on interview. 9. McGrath's case, however, was presented by the Crown in a very different way. Again fourteen years was recommended as the starting point. Two years was to be taken off for the plea of guilty. Three further years discount was to be afforded for lack of significant record, co-operation in interview and other available mitigation. In addition he was to be given a further generous discount for the subsequent co-operation with the investigation which included the naming of his supplier. The sentence proposed therefore for Bruton was eleven years and that for McGrath five years. On the second count relating to the Class B drugs the recommendation which was followed by the Court was three years concurrent. There was no drug trafficking confiscation order and there was no indication that either of these men were

other than couriers. 10. The Royal Court accepted the conclusions in part. It took the view that thirteen years was a starting point but that in Bruton's case the discount was too generous, so with only two years deducted for the plea and other mitigation, he was still to serve eleven years. Likewise, the lower starting point in McGrath's case did not result in his having a lower overall sentence from that recommended by the Crown. 11. In a succinct submission his Counsel, Advocate Benest, has taken three main points on the issue of the length of sentence. Firstly, the five year sentence for McGrath shows an undue disparity between the two accused. Secondly, the general mitigation was undervalued. Thirdly, insufficient credit was given for the guilty plea. Disparity 12. With regard to disparity, as we have already observed, the Crown considered that the Applicant and Mr McGrath were involved in a joint enterprise. Given that on such a premise the Crown would have contended for a starting point of 16 years, both accused asked that sentence be assessed on the basis that each was operating separately from the other. The Crown acceded to that request: the Applicant benefited from this. It is against that background that we must evaluate the submission that the disparity between the sentence passed on the Applicant and on Mr McGrath was "such as to give rise to a real sense of injustice" . Rayner

- v. A. G. (25 September, 1996) Jersey Unreported CofA, Calcutt JA. 13. The Applicant makes no complaint about the deduction (4 years) made from the starting point of 13 years in the case of McGrath. In Campbell, Molloy and MacKenzie -v- AG

(1995) JLR 136 CofA, the Court said in relation to mitigating factors, "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." (p 145). Mr McGrath named his supplier and made his assistance public. The Royal Court, quite properly in our view, made a substantial allowance for that fact. 14. The Applicant's point is a somewhat different one. He asserts that his role was less than that of ;McGrath (the sole basis for this assertion being his own alleged inability to name the common source) that he would not name the source because he did not, whereas McGrath did, know who the source was; and that it was he who persuaded McGrath to name the source in the hope that both would benefit when sentence was passed. 15. These interdependent submissions seem to us to be fatally flawed for two main

reasons.

Firstly, they are premised on the fact that this was a joint enterprise so that the relative involvement of each was capable of evaluation. However the Applicant had disavowed participation in a joint enterprise and invited sentence on that basis. He cannot consistently ask the Court to compare and contrast his involvement with that of McGrath. Secondly, in so far as they are assertions of facts e.g. as to what the Applicant asked McGrath to do, they were neither common ground nor even (as we are reliably informed by the Crown) advanced below. 16. In order to pursue this line of argument the Applicant should have accepted that he was part of a joint enterprise: and, if no common ground as to the relative roles of himself and McGrath could be established, have procured a Newton hearing in which these matters on which he now seems

to rely would have been the subject of contested evidence and formal resolution. 17. For these reasons we reject the "disparity" argument. General Mitigation 18. Mr Benest's second contention was that the sentence passed by the Royal Court was manifestly excessive because insufficient account was given for the general mitigation available to him under four heads. He, also, relied on the fact that Mr Bruton pleaded guilty at an early stage, albeit not immediately. 19. The Crown in its conclusions proposed a starting point of 14 years, less 2 years for the guilty plea, less a further year for what little mitigation was available. The Royal Court decided that the right starting point was 13 years and that the appropriate deduction for all the mitigation was 2 years. 20. In our view the four specific matters relied upon by Mr Benest do not, either in themselves, or cumulatively, provide a basis for any substantial mitigation. We accept that the Applicant was only a courier and that he acted so as to clear off his drug debts. Neither of these circumstances calls for any significant reduction in sentence. So far as the question of threats is concerned, (and assuming the genuineness of the assertion, 'easy to make, difficult to disprove'), we endorse what was said by the Royal Court in the present case (and I quote from page 3 of the judgment): "This Court has said on other occasions that threats made as a result of previous purchases of drugs are no mitigation. If a person puts himself in a position of owing money to a drug dealer it is to be expected that he will be threatened, and he cannot thereafter use that as mitigation; he has put himself in that position. " 21. The same applies if the threat is to somebody close to him. The fact, if it be such, that the Applicant's pregnant girlfriend was threatened may explain, but it cannot excuse, his criminal acts nor mitigate what would otherwise be their consequence. She, as he, was only exposed to threats because he would not immediately agree to act as a courier; but he was only under pressure to act as a courier because of his drug debts. Ultimately he bore responsibility for the predicament in which he found himself. 22. So far as the discount for the guilty plea is concerned it is to be noted that the Royal Court reduced the Crown's conclusions of the overall discount from the starting point of 3 years to 2 years. The initial response of the Applicant was that he knew nothing about the drugs which must have been put in his bag when he was sleeping and one has to ask what evidence to prove his guilty knowledge was available to the Crown. First of all there was the lie about the source of the Jersey money, and, second there was the false identity. Neither of these lies necessarily implied that he was a drug courier. On further examination conviction was not inevitable as it usually is with internal concealment. We follow the general guidance summarised at the top of page 146 of the Judgment in Campbell, Molloy and MacKenzie -v- AG

(1995) JLR 136 CofA. 23. Had the matter been contested the Crown would not have been certain of success and the expense of a trial was certainly saved by the plea. 24. We have, accordingly, concluded that the Royal Court did not give sufficient allowance for the guilty plea. We consider that making allowance for this, and any other mitigation, the sentence should be reduced to one of 9½ years' imprisonment and leave to appeal is accordingly given to enable that adjustment to be made. Authorities Campbell, Molloy and MacKenzie -v- AG

- (1995) JLR 136 CofA. AG -v- Chadwick (30 th October, 1995) Jersey Unreported. AG -v- Jones, Raynor (6 th June, 1996) Jersey Unreported. Raynor -v- AG (25 th September, 1996) Jersey Unreported CofA. Wright -v- AG (12 th July, 2000) Jersey Unreported CofA. R -v- Fawcett (1983) 5 Cr. App. R.(S) 158. R -v- Frankson (1996) 2 Cr. App. R.(S) 366. R -v- Skidmore (1997) 1 Cr. App. R.(S) 15. Archbold (2000 Ed'n) paras 5-160 to 5-163: pp.550-554. AG -v- Bruton, McGrath (27 th April,
- 2000) Jersey Unreported. Bray -v- AG (27 th January, 2000) Jersey Unreported CofA. Asher Sivan & Ors (1988) 10 Cr. App. R.(S) 282. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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