

Date: October 25, 2002
Docket: CR 171070 & 171071

IN THE SUPREME COURT OF NOVA SCOTIA
(Cite: *R. v. Dann*, 2002 NSSC 237)

BETWEEN:

HER MAJESTY THE QUEEN

-and-

JAMIE DOMINIQUE DANN

DECISION (*SENTENCE*)

Heard before: The Honourable Associate Chief Justice Michael MacDonald

Date Heard: February 14, 2002

Oral Decision: February 14, 2002

Written Release
of Decision: October 25, 2002

Counsel:

Timothy McLaughlin, *Public Prosecutions (Federal)*
for the Crown

Anne Copeland, *Nova Scotia Legal Aid*
for the Offender

- [1] This is the matter of Jamie Dominique Dann for sentencing. We are dealing with a two count indictment one dealing with possession for the purposes of trafficking in cocaine, and the other dealing with wilfully obstructing peace officers. On December 6th of last year a jury found Mr. Dann guilty of the former and at the same trial he plead guilty to the latter.

Background

- [2] The background information is accurately set out in paragraphs 2 - 10 of the Crown's brief as follows:

2. On June 6, 2000 at approximately 14:10 hours, the accused was in the process of boarding a plane for St. John's, Newfoundland at the Halifax International Airport. He was traveling under the false name of Paul Emile LeBlanc. As he was being screened by airport security, Virginia O'Leary of Shanahan Security noticed what she believed was a plastic bag wrapped in cellophane inside of his pants.

3. At this time she asked Mr. Dann to step aside inside the pre-board screening area. Mr. Dann then advised her that he had lost his watch and he left the area, leaving his personal effects behind. He was then followed by Mr. Ray Burton, another security officer with Shanahan Security, who followed him outside the terminal and observed him move quickly along the sidewalk to the end of the building and around the corner out of site [sic]. Mr. Burton stayed there until Mr. Dann returned to his field of vision. At this time, Mr. Dann approached Mr. Burton stating that he was sick and that he was on medication.

4. At this time, S/Sgt. Fraser and other members of the RCMP attended and had contact with the accused. Mr. Dann indicated to S/Sgt. Fraser that he was Paul LeBlanc, and that he wasn't feeling well, and that he was having a reaction to his medication. S/Sgt. Fraser then went to the area that Mr. Dann indicated he had gone to, with Mr. Dann. Mr. Dann advised S/Sgt. Fraser he was traveling to Newfoundland to see his girlfriend, and that his mother had dropped him off.

5. Mr. Dann then returned with Mr. Burton and with Commissionaire Jim Neville to pre-board screening to pick up his personal effects. He advised Commissionaire Neville that he was Paul Emile LeBlanc.

6. During this time S/Sgt. Fraser searched the area where Mr. Dann indicated he had been and went around the corner and looked in a garbage can and located a blueish package, wrapped in plastic, containing what appeared to be drugs. This item was later analyzed to be powdered cocaine having a weight of approximately 297 grams. S/Sgt. Fraser returned to pre-board screening and placed Mr. Dann under arrest, but arrested him in the name of Paul Emile LeBlanc as S/Sgt. Fraser was not

aware of his true identity. Mr. Dann was chartered, arrested and cautioned at 14:40 hours June 6, 2000.

7. S/Sgt. Fraser questioned Mr. Dann who advised him he was traveling to Newfoundland to see a stripper/dancer though he did not have her name. At about this time he indicated to S/Sgt. Fraser that his real name was Jamie Dann and he was traveling in the name of Paul LeBlanc to obtain a cheaper flight.

8 At approximately 16:04 hours Cst. Chisholm and Cst. Ryan from the Drug Section of the Lower Sackville RCMP Detachment took custody of the exhibits and Mr. Dann. Further questioning of Mr. Dann disclosed further discrepancies in his story including the number of people he was going to see, who they were, where they were, who they lived with, and their telephone numbers.

9. Mr. Dann was brought before his Honour Judge William MacDonald, Provincial Court of Nova Scotia, shortly before 15:00 hours on June 7, 2001. He was released the following day on a number of conditions.

10. At trial evidence was given by Cst. Blair Hussey of the Halifax Regional Police Department that a person in possession of 300 grams of powdered cocaine would only have it for the purposes of trafficking and the method of travel used by Mr. Dann was consistent with that of a drug courier.

[3] I add further that the same experts estimated the street value of these drugs to be approximately \$25,000 to \$30,000.

The Offender

[4] Mr. Dann is a 27 year old man. He has never been married. He is presently engaged in a common law relationship with Yvonne LeBlanc since 1999. There are no children of this union.

The Principles of Sentencing

[5] Sentencing remains a difficult task for the Court. The principles of sentencing have recently been codified and are set out in Section 718.1 and 718.2 of the *Criminal Code of Canada*:

718 The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

- (b) to deter the offender and other persons from committing offences;**
- (c) to separate offenders from society, where necessary;**
- (d) to assist in rehabilitating offenders;**
- (e) to provide reparations for harm done to victims or to the community; and**
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.**

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,**
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, color, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor,**
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or child,**
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or**
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization**

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;**
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;**
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and**

- (e) **all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.**

[6] And, applicable to the case at Bar, s. 10(1) of the *Controlled Drugs and Substances Act*, 1996, c. 19 provides:

10. (1) Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

Aggravating Circumstances

- [7] Turning to aggravating circumstances the nature of this offence is such that it involves significant planning and forethought. It is not one that arose from random circumstances. His actions were an important cog in a most dangerous wheel.
- [8] The second aggravating factor is the amount of cocaine. This is a large quantity with a street value of \$25,000 to \$30,000.
- [9] Finally under aggravating factors, although Mr. Dann does not have, relatively speaking, a lengthy criminal record, he does have a criminal record and it does involve possession of narcotics and a theft charge. His record was read into the Court record by the Crown and not denied.
- [10] There are no significant mitigating factors for me to consider.

Disposition

- [11] In dealing with cases of trafficking in cocaine the Nova Scotia Court of Appeal and the Nova Scotia Supreme Court have consistently emphasized the need for general deterrence. This must be a primary consideration. In *R. v. Ferguson* (1988), 84 N.S.R. (2d) 6 (S.C., A.D.) Jones, J.A. at page 256 noted:

This Court has repeatedly emphasized the need for deterrence in the case of drug traffickers. Persons who become involved in trafficking do so deliberately with full knowledge of the consequences. The general range of sentences, even for minor traffickers has been between six to twelve months imprisonment. The primary element of sentence for trafficking must be deterrence and I apply the same logic for

someone convicted of possession for the purpose.
added]

[Emphasis

- [12] In *R. v. Butler* (1987), 79 N.S.R. (2d) 6 (S.C., A.D.) Pace, J.A. emphasized the need to deter persons who may become involved in trafficking with a view to making profits. He stated:

The social evil of drugs be they called “hard” or “soft” variety, must attract an element of deterrence sufficient to deter those of like mind who may be lured into the business with the hope of easy gain.

- [13] I have also reviewed the cases referred to by both counsel. They are *R. v. Stokes*, [1993] N.S.J. No. 412; *R. v. Smith*, [1992] N.S.J. 365; *R. v. Crosson*, [1993] N.S.J. No. 19; *R. v. Clarke*, [1994] N.S.J. No. 474; *R. v. Huskins*, [1990] N.S.J. No. 46. Whether they are straight trafficking or possession for the purpose of trafficking it is clear to me, after a review of these cases and other cases in our jurisdiction that a fit and proper sentence for this type of offence would be in the range of 4 to 5 years.
- [14] Therefore having considered the submissions of counsel, and particularly the fact that this is a joint recommendation, I am prepared to accept a joint recommendation of 4 ½ years for the charge of possession for the purposes of trafficking as well as 30 days concurrent for the charge of obstruction.

Charter Rights Remedy

- [15] In earlier proceedings I found that the Accused’s *Charter* rights had been breached and I deferred a disposition or remedy for that breach until after trial. Counsel have agreed and I accept that a reduction of 3 months would be appropriate so that the net sentence after the remedy for the *Charter* breach would be 4 years and 3 months and I so order; Again with 30 days concurrent for the obstruction charge.
- [16] I would also confirm the mandatory *Fire Arms Prohibition*, and in the circumstances I waive any *Victim Fine Surcharge*.

Michael MacDonald
Associate Chief Justice