

IN THE CROWN COURT OF NORTHERN IRELAND

THE QUEEN

-v-

JOHN HUNTER

HART J

[1] The defendant has pleaded guilty to 10 counts of being knowingly concerned in the fraudulent evasion of VAT and excise duty over a period of almost one year between 3rd July 1997 and 14th May 1998. The charges related to the importation of 11,840,450 litres of various forms of fuel oil from the Republic of Ireland and its distribution over much of Northern Ireland, with a total loss of VAT and excise duty of £6,023,574.89.

[2] Whilst the Customs & Excise believe that much more fuel may have been illegally imported, this is the figure which is covered by the charges and the Court must sentence the defendant only on that basis.

[3] As is apparent from the quantity of fuel involved, this was a major operation which involved the distribution and sale of smuggled fuel over most of the province. The evidence before the court alleges that the operation was organised and financed by one Eamon Devlin, who is not before the court. The fuel was purchased from legitimate suppliers in the Republic and the appropriate duty paid there. It was delivered to premises at Corragary, Castleblaney, County Monaghan, before being imported into Northern Ireland.

[4] The sale and distribution of the fuel was arranged through various companies which were set up in Northern Ireland for that purpose and in some cases registered for VAT. Sales were usually made in Northern Ireland inclusive of VAT, although sometimes sales were for cash and no

VAT was charged. No excise duty was being paid nor, except for some tiny payments which are of no significance, was any VAT paid, resulting in the loss of revenue of just over £6 million.

[5] However, the organiser's gross profit was only a proportion of the estimated loss of revenue of £6 million because the fuel was purchased duty paid in the Republic. Nevertheless, because of the difference between the legitimate prices of fuel in the two jurisdictions, and because no duty was being paid in Northern Ireland, the potential profits were very great, even allowing for the distribution costs which were incurred.

[6] This was therefore a carefully organised operation which was carried on for a substantial period of time on a very large scale.

[7] Whilst the defendant was not the main figure behind this operation, he was nevertheless a major participant in this from the beginning. He was present in June 1997 when approaches were made to suppliers in the Republic about the possible importation of fuel into Northern Ireland, and he must eventually have been under no illusions from whatever discussions that had taken place in his presence that an operation of this nature could only be profitable if it were illegal.

[8] Whilst there are references to other individuals in the committal papers who may have played some part in making sales and collecting money, Hunter appears to have been the main sales representative whose role was essential to the success of this operation. Therefore, whilst I am satisfied that his role was subordinate to that of Devlin, nevertheless Hunter was his right-hand man and played a significant role in the operation.

[9] There is some evidence which *suggests* that Hunter's reward was to be 1p per litre, which the prosecution calculate would amount to a figure in the region of £120,000 on the basis of the amount of fuel involved in the charges before the court. Mr. Ramsey QC says that Hunter's commission was to be a ha'penny per litre, which was to mean that he would receive about £60,000, although the defendant says that he did not receive all that he was promised. Be that as it may, the rewards for Hunter for his part in these offences was still substantial.

[10] The principal factor when considering cases of this sort is the loss of public revenue. The maximum sentence on each count is one of seven years

imprisonment, and in Dosanjh 1999 1 CAR Sentencing 107, the Court of Appeal in England laid down guidelines for sentencing in cases of evasion of duty, and I consider that it is appropriate to follow these guidelines in this jurisdiction where, as the cases before the courts in recent years show, there is a major problem with the evasion of duty, whether it is payable on fuel, alcohol or cigarettes.

[11] In Dosanjh the court held that where the amount of duty exceeded half a million pound and I quote: "Sentences in the region of four years increasing to the statutory maximum of seven years when £1 million or more in duty is evaded will be appropriate following a trial, with a suitable discount for plea of guilty. In exceptional cases where very many millions of pounds in duty are evaded consecutive sentences may be appropriate. Alternatively it may be appropriate to charge conspiracy to cheat which is capable of attracting higher sentences than those already indicated".

[12] When outlining the prosecution case yesterday, Mr. Sefton *stated* that there had been a considerable increase in the amount of fuel smuggled into Northern Ireland since 1997, when the offences to which the defendant has pleaded guilty started. In 1998 it is estimated that 200,000,000 litres were smuggled with an estimated loss of revenue in the region of £100 million, whereas in 2000 it is estimated that 760,000,000 litres were smuggled with an estimated loss of revenue of £380 million.

[13] In the past, suspended sentences have been imposed in cases of this nature, with fines or orders for compensation also being imposed in some instances. I am satisfied that the nature and scale of the problem of evasion of duty in Northern Ireland due to the smuggling of dutiable goods of any sort, and particularly fuel, means that a deterrent sentencing policy involving more severe sentences is necessary.

[14] It is clear that the smuggling of fuel has become a major form of criminal activity in recent years and is resulting in very large losses of public revenue.

[15] It has a significant effect on legitimate fuel businesses who have to compete with lower prices being offered by smugglers, and this has no doubt played a part in the closure of many filling stations throughout the province. This type of criminal conduct also leads to widespread flouting of the law and is associated with other forms of criminal activity. The long

land boundary with the Republic and the difficulties which this creates for the authorities in preventing such offences means that the smuggling of fuel into Northern Ireland is particularly prevalent.

[16] Taking all of these considerations into account, had the prime mover of these offences been convicted I consider that the appropriate sentence for him would have been in the region of seven years' imprisonment. Given his role, had Hunter contested these charges and been convicted, I would have considered a sentence in the region of five years' imprisonment, before any mitigating factors were taken into account, as appropriate.

[17] I must now consider whether there are any mitigating features. The first is his plea of guilty. Whilst this was not made until the *start* of the trial, it resulted in the saving of considerable public money because the trial which would have lasted several weeks was unnecessary. This meant that a very large number of civilian witnesses were not required to attend in court, so avoiding substantial interference with their businesses. Therefore, despite the lateness of his plea, I give the defendant considerable credit for his plea of guilty.

[18] Secondly, by not proceeding with count one, conspiracy to cheat, the prosecution recognise that Hunter's role in the inception and execution of this scheme was less than that of Devlin, although it was still an important one.

[19] The defendant has a number of previous convictions but I do not consider that they are of any significance in the context of these offences. I take into account that the defendant's unsuccessful business career and his subsequent bankruptcy no doubt made him more susceptible than many to the substantial rewards involved in this type of offence, and I also have regard to the effects of the robbery at his home in November 2000.

[20] Were all this that could be said on the defendant's behalf, then the sentence would be one of three years' imprisonment. There is, however, one further matter to which I must refer. Several references have been handed into court from a number of individuals which speak highly of the efforts which the defendant has made and the time he has devoted to helping others to deal with alcohol problems since he stopped drinking in 1991. These references show another side to the defendant's character, and whilst personal circumstances play little part in mitigation of sentencing in

cases of this nature, a defendant who has made a valuable and significant contribution to the lives of others is entitled to ask that this be placed to his credit when the ultimate sentence is being decided, and I therefore reduce the sentence to one of two and a half years' imprisonment to take this into account.

[21] I am obliged to consider whether a custody/probation order should be made. Given the nature of these offences and the defendant's age I do not consider that probation supervision would have a role to play upon his release and therefore I do not consider that custody probation is appropriate. I therefore sentence the defendant to two and a half years' imprisonment on each count, the sentences to be concurrent. I have already made an order under Article 11 of the Proceeds Of Crime (Northern Ireland) Order 1996 adjourning the prosecution application for a confiscation order under Article 8(1) of that order. By virtue of Article 12(3) the prospect of such an order is something which the court is obliged to leave out of account in determining the appropriate sentence and I have left it out of account.

[22] Finally, Mr. Sefton asked the court to make an order disqualifying the defendant in accordance with Article 4 of the Companies (Northern Ireland) Order 1989 on the basis that his plea of guilty amounted to a contravention of Article 5(1) of the 1989 Order because the defendant was guilty of an offence in connection with promotion of Beta Fuels and DCP Distributors Limited because he collected VAT on behalf of those companies which was not accounted for. Whilst I accept that the defendant's conduct could be said to have some relevant factual connection with the management of these companies for the reasons Mr. Sefton suggests, see *R-v-Goodman* 1993 2 AER at 792, his role was that of a salesman and prominent employee rather than a company officer in the sense that the Chairman or directors of the company are officers. It is significant that Article 5 is in the same terms as the Company Directors Disqualification Act 1986 in England, the title of which suggests that it is directed primarily at officers of the company, as can be seen from the various examples of cases where the court has invoked this power, which are to be found in volume two of Butterworth's Current Sentencing Practice at H5-2. Therefore, whilst the defendant may be liable to be dealt with under this provision, the mischief aimed at was the conduct of those who formed these companies. In any event, the power is a discretionary one and I am not persuaded that such an order would serve a useful purpose in view of the defendant's age, his business background and the

period of imprisonment which I have imposed. Therefore, I do not make an order for his disqualification.

MR. RAMSEY: Your Honour, there are there two matters that I want to ask your Honour about. The first relates to a request from Mr. Hunter's wife. I don't know what - arrangements there are for a visit in the building but if those arrangements are possible (I will see what the prison officers can do) ; if your Honour directs that such arrangements can be made, if they could be made.

JUDGE HART: That is a matter for the prison authorities, but I hope if arrangements can be made that that request could be facilitated.

MR. RAMSEY: The second matter that your Honour is already alert to the fact that there are confiscation proceedings, and I would wish you to hear from my solicitor.

THE SOLICITOR: It is an application for legal aid.

JUDGE HART: I grant the defence certificate. Is there a significant amount of money involved in this, Mr. Sefton.

MR. SEFTON: Yes, there could be quite a very significant amount of money involved, your Honour. It is presently in draft, but yes.

JUDGE HART: Very well, a defence certificate for two Counsel. Anything further.

MR. RAMSEY: Nothing.

JUDGE HART: Very well, put the accused back.

MR. SEFTON: Would your Honour make a copy of your Honour's sentencing remarks available to the prosecution. I am particularly interested in your Honour's remarks about the disqualification.

JUDGE HART: Very well.

MR RAMSEY: Could the same be afforded to the defence, your Honour, I am very much obliged.