

R. v. Jeyarajah and Thangavelu, 500-01-005967-051, Court of Quebec, 20 September 2007

Prison sentences of 2 years less a day and 15 months for uttering \$240,000 and \$95,000 in counterfeit money and possession of instruments for counterfeiting

The accused entered guilty pleas to charges of uttering counterfeit money. Mr. Thangavelu was also charged with possession of instruments for counterfeiting bank notes. They also pleaded guilty to possession of counterfeit social insurance cards and passports.

During the investigation, the police made contact with Mr. Jeyarajah through an undercover officer. On six occasions, Mr. Jeyarajah turned over to the police a total of \$240,000 in counterfeit money. On two occasions, he was accompanied by Mr. Thangavelu, whose participation led to uttering \$95,000 in counterfeit money.

The accused did not have prior criminal records. The judge mentioned that the age of the accused (29 years in Mr. Jeyarajah's case and 36 years in Mr. Thangavelu's) precludes attributing the error to youth. The only purpose of the offence was financial. The police investigation revealed that the accused belonged to an organization, considering the ease with which they could obtain such amounts of money. The accused were therefore considered to be wholesalers rather than mere distributors.

The victim impact statement was submitted in evidence and cited on several occasions in the decision. The Crown prosecutor called for a jail sentence for both accused, while the defence counsel suggested a suspended prison sentence. The judge ruled according to the suggestion of the Crown prosecutor, despite the good behaviour of the accused since their arrest. In fact, the judge excluded a suspended prison sentence because of the aggravating factors and the purposes of sentencing that were considered in this case, namely, denunciation and general and specific deterrence. The Court sentenced Mr. Jeyarajah to 2 years less a day in jail and Mr. Thangavelu to 15 months imprisonment.

Manon Lapointe
222 Queen Street
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Ottawa, Ontario
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October 16, 2007

Re: Sentence imposed, on September 20, 2007,
on Messrs. Jeyarajah and Thangavelu by
The Honourable Mr. Justice Jean-Pierre Boyer of the
Court of Quebec (Montréal)
No. 500-01-005967-051

Dear Colleague,

Here is Judge Boyer's decision.

Yours very truly,

PL/ntb

Pierre Lévesque
Criminal and Penal Proceedings Attorney

Enc.

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CANADA

COURT OF QUEBEC
(Criminal and Penal Division)

PROVINCE OF QUEBEC

DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

CASE NO.: 500-01-005967-051

STAGE: SENTENCING

PRESIDED BY: THE HONOURABLE MR. JUSTICE JEAN-PIERRE BOYER, J.C.Q.

NAMES OF THE PARTIES:

HER MAJESTY THE QUEEN
Complainant

v.

RAJMOHAN JEYARAJAH
THULASINATHAN THANGAVELU
Accused

APPEARANCES:

PIERRE LÉVESQUE
Counsel for the complainant

GABRIEL BOUTROS
Counsel for the accused

DATE OF HEARING: September 20, 2007

P-8083

FILE: 2587

JEAN LAROSE
Official Reporter

THE YEAR TWO THOUSAND AND SEVEN (2007), the twentieth (20th) day of the month of September:

SENTENCE

THE COURT:

In the cases of Mr. Geyarajah [sic] and of Mr. Thangavelu, the accused have entered guilty pleas to charges of uttering counterfeit money as well as charges of having in his possession plates, dies, machines and instruments intended to be used to commit forgery, in the case of Mr. Thangavelu, and to charges of fabricating counterfeit passports in the case of Mr. Geyarajah. Pre-sentence reports were prepared for each of the two accused. The parties completed their submissions on the sentence to be imposed on May twenty-third (23rd) last and the delivery of the judgment was adjourned to to-day, the twentieth (20th) of September. The facts: the accused participated in uttering counterfeit money in the following circumstances. The police, without having succeeded in identifying all of the members of an organization of counterfeiters, make contact with Mr. Geyarajah [sic] through an undercover officer. On six occasions, the latter turned over to the police a total of two hundred and forty thousand dollars (\$240,000) in counterfeit money. On two occasions, he is accompanied by Mr. Thangavelu whose participation led to uttering ninety-five thousand dollars (\$95,000) in counterfeit money. At the time of their arrest, many social insurance cards, scanners of blank credit cards, cheque-books bearing various names, two terminals, one of the National Bank and the other of a credit union, used to . . . which are used to make debit cards, were found at Mr. Thangavelu's residence. As for Mr. Geyarajah [sic], counts 8 and 9 of the charge refer to three counterfeit passports as well as to various social insurance cards and driver's licenses. The police investigation suggests that the accused belong to an organization, considering the ease with which they obtained such amounts of money. They are considered to be wholesalers rather than small couriers. The purposes and principles that must govern the imposition of a sentence are stated by Parliament in Sections 718 ff. of the Criminal Code. The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. This essential purpose is achieved by imposing a just sanction which aims at achieving one or more of the purposes stated in the legislation. These purposes are as follows: to denounce unlawful conduct; to deter the offender from committing offences; to deter other persons from committing offences; to separate offenders from society, where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; to promote a sense of responsibility in offenders; and to bring them to acknowledge the harm done to victims and to the community. The fundamental principle of sentencing is that of proportionality. The sentence must be proportionate to the gravity of the offence and it must be proportionate to the degree of responsibility of the offender. So, on analysis, in this case, it must be recalled that the offences for which the accused have been found guilty carry a maximum sentence of fourteen (14) years. Also, the subjective gravity of the crimes committed by the accused is substantial. In a document prepared by the Bank of Canada, and presented under filing number S-1, Pierre Lévesque, prosecutor for criminal and penal proceedings, draws the Court's attention to the consequences of counterfeiting, here are a few extracts:

[TRANSLATION]

The impact of counterfeiting on direct victims, so, there is no reimbursement, the victims of counterfeit bank notes are not reimbursed by the Bank. Under the Bank Act, the Bank of Canada has a legal obligation to honour genuine notes. It has no legal obligation to honour counterfeits. Counterfeiting losses can substantially impact individuals and businesses. The impact of counterfeiting on individuals of limited means or small businesses can be substantial. Even larger businesses with low margins – such as grocery stores that operate on 1–2% margins – can be severely impacted. A grocery store may have to sell \$5,000 to \$10,000 worth of goods to recover the loss of a single counterfeit \$100 bank note.

Now for the impact of counterfeiting on society at large. So, bank notes are vital to the economy. We have seen an increase of almost one hundred per cent (100%) in fourteen (14) years. In nineteen ninety-two (1992), twenty-two billion dollars in circulation; in two thousand and six (2006), forty-three point five billion dollars in circulation. Counterfeiting undermines confidence in Canadian bank notes that Canada must maintain. The effect of the loss of

confidence by some businesses in bank notes: In July of two thousand and one (2001), one operation in Windsor, Ontario put approximately sixty-three thousand (63,000) counterfeit one hundred dollar bills (\$100) into circulation. Although a substantial amount, it was still very small when compared to the one hundred and sixty-nine million (169,000,000) genuine one hundred dollar notes (\$100) in circulation. Only about four (4) bills would . . . only about four (4) bills in ten thousand (10,000) would have been fake. However, the potential for loss was perceived as substantial by businesses. As a result, shortly after the Windsor case hit the media, fifteen per cent (15%) of retailers in the Windsor-Toronto-Montréal corridor posted signs refusing to accept one hundred dollar bills (\$100). Other retailers soon posted similar signs across Canada. Many retailers including grocery chains, coffee shops, fast food restaurants and video stores still refuse to accept one hundred dollar bills (\$100) five (5) years later. Surveys conducted for the Bank of Canada indicate that approximately five per cent (5%) of businesses in Canada currently refuse to accept one or more denominations of bank notes. The Bank of Canada's earnings from bank notes are remitted to the government of Canada. Therefore, we all ultimately pay because the Bank remits less earnings due to its increased costs. The Bank has spent close to twenty-nine point two million dollars (\$29.2M) from nineteen ninety-seven (1997) to two thousand and six (2006) to develop and issue the new Canadian Journey series bank notes. In addition, these new notes will cost forty per cent (40%) more to produce – nine cents a bill as opposed to six point five cents. The increased security costs represent only a portion of the total increased costs from counterfeiting. The Bank's spending for all the costs related to the counterfeit – no, pardon me, not counterfeit, the currency function – namely, increased communications, education and training, have increased from sixty-six million dollars (66M\$) in two thousand and one (2001) to one hundred and twenty-three million dollars (\$123M) in two thousand and six (2006). Reading this document leaves no doubt in the Court's mind about the financial losses caused by counterfeiting. In this same document, there is a reference to the judgment *R. v. Harding* [sic] that can be found in 2001, OJ, number 5161, where are reported the following comments of Reilly J. with which the Court is in full accord:

Counterfeit money constitutes a very serious threat to the community, from the economy of the community to the economy of the country, particularly now when it can be produced relatively easily, although the government does try to keep one step ahead. In this context, it is not surprising to see the severity of sentences imposed for this type of offence.

In his book *Sentencing*, 6th edition, Butterworths, author Clayton C. Ruby devotes a chapter to sentences imposed by the courts for uttering counterfeit money. At page 829, he writes as follows:

The Courts take a very serious view of charges involving currency. The usual range in reported cases lies between six months and six years and can be longer up to the maximum of 14 years.

A review of case law in the matter tells us that Courts must encourage deterrence of both the accused and persons who might be tempted to commit this type of crime. In the judgment *R. v. Sunsalla*, I will spare you the references, our Court of Appeal increased a sentence from one year to four years for uttering twenty-four thousand one hundred (24,100) ten dollar (\$10) U.S. bills. The Court sets out the comments of the Honourable Rivard who wrote for the majority.

[TRANSLATION]

The accused is a printer at whose place twenty-four thousand one hundred (24,100) nearly completely finished bills, films and other items used to produce them were found. It is evident that in order to commit these crimes, the accused had had dealings with organizers whose identity was not revealed to police authorities for fear of reprisals. In the circumstances of the case, it is my view that the sentence is inadequate and does not entail the deterrence consequences that seem to me to be necessary to stop those who, for lure of gain, might be tempted to follow Sunsalla's example.

In a judgment of the Ontario Court of Appeal, *R. v. Grosse*, a sentence of ten years imposed by the trial court on an accused whose involvement in uttering counterfeit money was qualified as amateurish was reduced to four years, even in the absence of a criminal record. In an unreported decision, *R. v. Mihalkof*, Harris J. of the Ontario Court of Justice imposed a sentence equivalent to four years in a case whose facts greatly resemble those of this case. Two hundred and forty thousand dollars (\$240,000) in counterfeit bills had been transacted with a double agent. For each of the accused a pre-sentence report was presented during submissions on the sentence. In the report prepared by probation officer

Lambert Beuparlant, it is mentioned that the accused Tan Gavelu [sic] was born in Sri Lanka and that he has resided in Canada since nineteen eighty-seven (1987). As for the charges for which he pleaded guilty, he explains having served as an intermediary on two occasions in transactions of counterfeit money while he knew persons who were involved in such activities. He says he received three thousand five hundred dollars (\$3,500) for his services. He has no criminal record, according to the probation officer, the prevalence of opportunism and lax values in the accused led to the deed. In the short term, the risk of recidivism seems low. However, in the longer term, the lure of easy money and association with marginal individuals could greatly cloud this prognosis. In Mr. Thangavelu's case, the positions of the parties are as follows: the public Ministry calls for a prison term in a penitentiary, while the defence suggests that the Court impose a prison term to be served in the community. In the other report prepared by probation officer Eleonor Gribbon, it is mentioned that Mr. Geyarajah [sic] is a native of Sri Lanka and has resided in Canada since nineteen ninety-one (1991). He is married to Kankesvary Asmohan and they have three young children. It is also mentioned that:

His wife states that she often warned the subject that his action would eventually get him into serious trouble. His wife was very upset by the incident that took place, he deeply regrets not taking her advice. According to officer Bruce Anderson, GTA Commercial Crime Section Toronto North Detachment of the Ontario Provincial Police, the accused provided little information; he was not cooperative with the police officers. It is also said that the accused has not [sic] criminal record; he reports that he recently received his mortgage brokers license, and at present he is very involved in building up and operating his own mortgage business. And he goes on saying that collaterals describe the subject to be a responsible and hard working man of integrity. However, as his new business may allow him access to a great deal of personal information, concerns may be raised in terms of public re-victimization.

Now, as for the accused Geyarajah [sic] Rajmohan, the position of the parties is as follows: the public Ministry calls for a stricter prison sentence than for the accomplice, while the defense suggests a suspended prison sentence. Case law and the legislation require that I take into account the situation of the offenders and require me, before considering deprivation of liberty, to examine the possibility of less restrictive sanctions when justified by the circumstances. The following aggravating factors lead the court to exclude a sentence to be served in the community. Considering the objectives of denunciation and of general and specific deterrence – the factors are described below. The ease with which the accused were able to procure such sums of counterfeit money indicates that they belong to a well-structured organization. The accused were large-scale dealers as opposed to small-time operators. The only purpose was financial; they acted for lure of gain. The ages of the accused at the time of the offence, twenty-nine (29) years in Mr. Geyarajah's [sic] case and thirty-six (36) years in Mr. Thangavelu's, precludes attributing the error to youth. The abilities of the accused would allow them to handle their financial problems otherwise. The Court realizes that the track records of the accused over the last three years could justify a suspended sentence, which is excluded because of the factors and objectives stated. However, it is this conduct subsequent to the offence which allows me to reduce the sentence. In the case of the accused Rajmohan Geyarajah [sic], the Court sentences as follows: On counts 1, 2, 4, 5, 6 and 7, a prison sentence of two years less a day; on Counts 8 and 9, a sentence of twelve (12) months, these sentences to be served concurrently, for a total of two years less a day. In the case of the accused Thulasinathan Thangavelu, the Court sentences as follows. Counts 1 and 2, fifteen (15) months imprisonment; count 3, twelve (12) months imprisonment; these sentences to be served concurrently, for a total of fifteen (15) months. Moreover, the two accused will be subject to a probation order of eighteen (18) months, starting from the moment of their release from prison. In addition to the statutory conditions, the two accused will be subject to the following specific conditions: they are prohibited from communicating directly or indirectly with one another; each is prohibited from having any bank document whatsoever, including credit cards, automated teller cards, cheques, bank drafts, made out in his name either as drawer or beneficiary. In both cases, the Court exempts the accused from having to pay a fine surcharge considering the period of incarceration. I repeat: each is prohibited from having any bank document whatsoever, including credit cards, automated teller cards, cheques, bank drafts made out in his name or that of his spouse, either as drawer or beneficiary.

END OF HEARING

OATH

I, the undersigned, Jean Larose, official reporter, certify under oath that the transcription of the notes taken by a digital recording, and without any control on my part, is to the best quality of said recording, according to law.

Signed

Jean Larose
Official reporter