***R. v. Kiss*, [1995] O.J. No. 5002; upheld, [1996] O.J. No. 2052 (Ont. C.A.)**

7 years and 5 years for conspiring to manufacture US$6½ million dollars, possessing US$3 million and possessing manufacturing equipment

Kiss and Sulug pled guilty to charges of conspiring to manufacture and utter counterfeit US$6 ½ million in bank notes and possession of US$3 million counterfeit bank notes. Kiss also pled guilty to possessing equipment for manufacturing counterfeit money. Sulug pled guilty to possessing a loaded semi-automatic handgun for which he did not have a certificate.

A total of US$3½ million dollars had been passed in 20 countries over a period of three to four years in addition to the US$3 million seized from their possession. This was the largest seizure of counterfeit U.S. money outside of the U.S. and the largest seizure of counterfeit money in Canada. The operation was described as more sophisticated than usual and with a fairly extensive distribution network. The counterfeits were above average in quality.

Kiss was a first-time offender, 54 years old, married and had grown children. He testified that he had been a printer all of his professional life. As a result of a business downturn, he agreed to print counterfeit bills at the instance of another person in 1990.

Sulug was a first-time offender, 34 years old and single. He described himself as a financial consultant who had been attempting to assist Kiss with his financial problems and ended up helping to distribute the counterfeit money.

The court indicated that it was clear from Canadian, American, and U.K. cases that general deterrence was the major factor in sentencing. The court noted that:

> The crime of counterfeiting, particularly in US dollars, strikes not only at the heart of the economy of the nation whose money is being duplicated, but at the economy of all those countries where the money is passed. Ultimately it strikes at the heart of the world economy.
>
> The sentences, from my review of the cases, are such that there must be an assurance sent to the international community, in addition to others of like-minded nature, that these are matters that will be dealt with very severely.

The court stated that the second most important principle of sentencing was specific deterrence which had little relevance in this case. The last factor the court considered was rehabilitation. The case law made it clear that rehabilitation was of minimal importance in this kind of case.

Kiss was sentenced to 7 years on the conspiracy charge and 4 years concurrent on the possession of counterfeit and possession of equipment for counterfeiting. Sulug was sentenced to 5 years on the conspiracy charge and 4 years concurrent on the possession of counterfeit money. The Court of Appeal for Ontario upheld the sentences notwithstanding certain factual errors made by the judge and indicated:

> We are, however of the view that the sentences imposed, having regard to the magnitude of the conspiracy (to manufacture in (*sic*) utter three million dollars U.S.) fully justified the sentences imposed. Clearly they were within the fit range.

ONTARIO COURT (GENERAL DIVISION)

HER MAJESTY THE QUEEN

against

LAJOS KISS and WALTER SULUG

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GUILTY PLEA PROCEEDINGS

REASONS FOR SENTENCE

BEFORE THE HONOURABLE MR. JUSTICE BELLEGHEM
On December 16th, 1994 and August 4th, 1995
at Brampton, Ontario

****

APPEARANCES:

M. SALTMARSH, ESQ.	Counsel for the Crown
W.J. PARKER, ESQ.	Counsel for the accused

AUGUST 4, 1995

Reasons for Sentence

REASONS FOR SENTENCE

BELLEGHEM, J – Orally:

The accused, Sulug, and the accused, Kiss, both pleaded guilty to a joint charge of conspiracy to commit the indictable offence of manufacturing and uttering counterfeit money, namely United States of America Federal Reserve Notes. They also pleaded guilty to a joint charge of having in their custody counterfeit money, namely United States of America Federal Reserve Notes. The accused, Kiss, pleaded guilty to a separate charge of having in his possession equipment for manufacturing counterfeit money. The accused, Sulug, pleaded guilty to a charge of having in his possession a loaded semi-automatic handgun for which he did not have a certificate.

Mr. Kiss, who is a 54 year old gentleman, became involved approximately five years ago in the manufacturing of counterfeit American money. He testified that this was at the insurance of another person who requested him to utilize his printing expertise for this

purpose. The evidence indicates that as of November, 1994 some three and one-half million dollars had been manufactured, passed, and seized in the world monetary systems. This money can be directly traced to the operations of Mr. Kiss. The money apparently surfaced in at least 20 countries. The money was being passed over a period of at least three or four years. In addition, at the time that Mr. Kiss and Mr. Sulug were arrested, approximately another three million dollars was seized.

It is, therefore, impossible to arrive at an exact figure of the amount of money that is at the heart of this operation. It would appear to be somewhere in the range of six million to eight million dollars face value, American. I am advised by counsel that this constitutes the largest seizure of United States counterfeit money abroad. I am also advised that it appears to be the largest seizure of any counterfeit money made in Canada.

I make those observations because in the sentencing process the maximum sentence, in this case 14 years, is reserved for the worse case and the worst offender. I note in passing that the principles of sentencing in this type of criminal activity differ in the United States than they do in Canada and the United Kingdom.

In general terms the principles of sentencing in the United States for this type of criminal activity concentrate primarily on the crime, rather than the criminal. The defendants, are therefore, the beneficiaries of the fact that the sentencing principles in Canada and in the United Kingdom, to which great deference is still paid in sentencing matters in this country, take into the account the antecedents and prospects of the offenders.

The evidence establishes that the workmanship was above average. Apparently some security features were duplicated on the bills. In fact, when the money was seized efforts were underway to defeat a chemical security process. The paper was to be chemically treated so that its counterfeit nature could not be detected by a detection pen used in the normal course by banks. The counterfeit money in this case had a reasonably good possibility rating. Much evidence was tendered with respect to where these particular bills stood in the ongoing hierarchy of the passing of counterfeit money in the United States and other countries from 1990 on through until the present time.

A member of the American Secret Service who testified that the primary function of the Secret

Service is to suppress the manufacture and distribution of counterfeit money. He also indicated that the product was in fairly good quality. He testified that the operation was more sophisticated than usual. It was obvious that there was a fairly extensive distribution network.

The evidence established that the money got into circulation through the cities of Chicago, Detroit and Buffalo. That in general is the nature of the operation.

Let us look at the offenders. Mr. Kiss is a 54 year old man who lives with his wife and one daughter. He has two daughters aged 29 who are married with children. He has been very supported, in the difficulties in which he finds himself as a result of these charges, by his family. He came from Canada from Yugoslavia in 1965 and I am advised that he had no previous criminal record. He has been a printer all of his professional life. As I indicated at the outset he became involved in this endeavour in 1990. According to his evidence, he was put up to it by a person from whom the Court has not heard. He apparently, or at least according to his evidence, his actions were motivated by a serious business downturn.

Mr. Sulug is a 35 year old single man

from Stoney Creek. He describes himself as a financial consultant and apparently was attempting to assist Mr. Kiss in his financial difficulties when he became involved in efforts to distribute the money which Mr. Kiss had printed. He, as well, has no criminal record. He is a graduate of the University of North Dakota in 1980, having come to Canada in 1968 from Croatia.

He was involved in an effort to distribute the money at the time he was charged. He had come into contact with a police informant. At the time that the efforts were being made to distribute the money he was supplied with a handgun which he is subject to one of the charges.

Mrs. Kiss testified with respect to her husband's background, their relationship and generally the character of Mr. Kiss, other than his involvement in this enterprise. I was favourably impressed with her evidence. There can be no doubt that in addition to the penalty that Mr. Kiss has drawn down upon himself, he has drawn a terrible tragedy on his family. I am impressed that the family continues to support him. This argues well for the future.

Mr. Sulug's sister testified. I,

likewise, was favourably impressed with her evidence. I found Mr. Sulug to be somewhat cynical in his testimony. Nevertheless, from his sister's evidence I found some support for the likelihood that neither Mr. Sulug nor Mr. Kiss would in the future be involved in this type of operation.

Having said that, I should review very briefly the principles of sentence that are required to be taken into account in a case of this type. It is clear from the Canadian cases and equally persuasive from the American and United Kingdom cases dealing with counterfeiting that the major factor is general deterrence.

The crime of counterfeiting, particularly in US dollars, strikes not only at the heart of this economy of the nation whose money is being duplicated, but at the economy of all those countries where the money is passed. Ultimately it strikes at the heart of the world economy.

The sentences, from my review of the cases, are such that there must be an assurance sent to the international community, in addition to others of like-minded nature, that these are matters that will be dealt with very severely.

The secondary principle is that of specific deterrence. I am satisfied that the principle has little, if any, relevance to the sentencing in this case.

The third factor is, of course, rehabilitation of the accused. The cases make it quite clear that it is of minimal effect in this type of case.

Therefore, I am required to impose a sentence which on the face of it for white collar crime of large magnitude must appear to be relatively severe. It must be a sentence that reflects the principle of general deterrence. It must be a sentence that when sent out into the community of other would be counterfeiters; is such to cause them to consider, to stop, to pause and question whether or not the crime is worth the time.

I have been referred to a number of cases by counsel and in my own research have been fortunate in being able to locate a number of other cases that are of some assistance in support of the principles which I have ennnnnnn. The one fact that is clear from all of the cases is that counterfeiting is an offence that is generally considered to be on the higher scale of the seriousness of offences in the hierarchy of non-violent or white collar criminal offences.

In the decision of R. v. Sarab, the Ontario Court of Appeal sustained a trial sentence of six years for the making of counterfeit money.

In Sonsalla, a 1971 decision from the Quebec Court of Appeal, possession of counterfeit money and possession of instruments for counterfeiting resulted in a sentence of four years on each charge concurrent. The amount involved was approximately US $24,000. In the case at bar the amount involved, as I indicated, is anywhere from three million dollars, if one looks only at the straight possession, to something in the range of eight million dollars if one takes into account the amount that was apparently distributed.

In R. v. Grosse, a 1972 decision of the Ontario Court of Appeal, the accused in the case faced three counts of conspiracy and one count of possession in respect of the manufacture, possession and distribution of counterfeit money. He was initially sentenced to ten years in jail and this was reduced to six years by the Ontario Court of Appeal.

In R. v. Lacoste, a 1965 Quebec Queens Bench decisions, a wholesale distributor of about $32,000 in counterfeit money was sentenced by the trial judge to three

months and on appeal it was increased to two years.

In Pisani, a 1970 Ontario Court of Appeal decision, the Ontario Court of Appeal sustained a six year term for three ten dollar bills, although the accused in the case apparently had an extensive criminal record. That case is therefore of little assistance.

In a fairly recent Ontario High Court decision, R. v. Bruno, an accused who was in possession of one million dollars worth of counterfeit funds was sentenced to two and a half years. He apparently had no record and made some effort to assist the police in the investigations respecting other parties.

I have reviewed, in addition, the decisions of Zezima, a 1970 Quebec Court of Appeal decision; Twitchin, a 1970 Ontario Court of Appeal decision; Vouniseas, a 1986 Ontario District Court decision; Sigouin, a 1970 Quebec Court of Appeal decision; Martins, a 1989 District Court decision; Bossoneau, a 1981 Ontario Court District Court decision; Langlois, a 1980 Ontario Court decision; Henry, a 1988 B.C. County Court decision; Boisvert, a 1970 Quebec Court of Appeal decision; Callamo, an Ontario Court of Appeal decision from the seventies; Agozzini, another 1970 Ontario Court of Appeal decision;

Lee, 1993 B.C. Court of Appeal; R.v. Jones, involving a distributor, 17 C.C.C. (2d) p. 31; Berntsen, a 1988 B.C. Court of Appeal, a trial involving uttering; Locascio, a 1988 B.C. County Court; Lauzon, an Ontario Court of Appeal decision involving uttering.

Many of those cases are of little assistance because the amount involved does not begin to approach the amount involved in this case. In addition, they do not involve the degree of sophistication, the period of time over which distribution took place, and the extent of the distribution, all of which are factors that are necessary to take into account in the sentence.

The most recent United Kingdom case which I found of assistance was a decision of Keane, a 1994 Court of Appeal decision involving custody and control of 247 $100 US bills for a total of $24,700 face value, as well as being in custody and control of counterfeiting material, that is negative for forging notes. The accused in that case in 1994 was sentenced to five years for the custody and control of the counterfeit notes and six years for the custody and control of the counterfeiting material.

In the present case I am satisfied based on the principles to which I have referred and the

cases to which I have referred that the appropriate sentences are and the accused will accordingly be sentenced as follows. Mr. Sulug, is there anything you want to say before being sentenced?

MR.SULUG: No.

THE COURT: Mr. Kiss, is there anything you want to say before you are sentenced?

MR. KISS: No.

THE COURT: The accused, Kiss, will be sentenced on count number one, that is the conspiracy to manufacture and utter counterfeit money, to a period of seven years in jail. On count number two, possession of counterfeiting material, four years concurrent. On count number three, the charge of possession of the counterfeit money, four years concurrent.

The accused, Sulug, will be sentenced on count number one, the charge of conspiracy to manufacture, to five years in jail. On count number three, the charge of possession of counterfeit money, to four years concurrent. On count number one, the possession of the restricted firearms, to six months concurrent.

MR. SALTMARSH: Your Honour, with respect to the firearms offence I assume the Court will be

Making a Section 100 order?

THE COURT: Yes. In addition, Mr. Sulug, will be prohibited from owning or possessing and firearms, explosives or ammunition for life.

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Certification

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of my stencemask recordings to the best of my skill and ability.

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Joyce Gallone, CVR
Certified Court Reporter

R. v. Kiss

Between
Her Majesty the Queen, respondent, and
Lajos (Louis) Kiss, applicant (appellant)

C.A. No. C22626

Ontario Court of Appeal
Toronto, Ontario
Morden A.C.J.O., McKinlay and Doherty JJ.A.

June 7, 1996
(2pp)

On appeal from Belleghem J.

Criminal – Sentencing – Appeals, variation of sentence.
Appeal by the accused from sentences imposed for conspiracy to manufacture and utter three million dollars.

HELD: Appeal dismissed. The sentences were fit. The section 100 order with respect to the appellant Sulug, was reduced to 10 years.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 100.

Counsel:

Andre Truck Jackson for the appellant.
Andrea Esson for the respondent.

The judgement of the court was delivered by

1 MORDEN A.C.J.O. (endorsement): - It is conceded that the trial judge made certain errors in his statement of the facts. We are, however of the view that the sentences imposed, having regard to the magnitude of the conspiracy (to manufacture in utter three million dollars U.S.) fully justified the sentences imposed. Clearly they were within the fit range. It is conceded that the lifetime s. 100 order imposed on the appellant Sulug was without jurisdiction.

2 Leave to appeal granted but the appeals are dismissed, with the exception of varying the section 100 order sentencing Sulug to a period of ten years.

MORDEN A.C.J.O.