

ROYAL COURT
(Samedi Division)

16th February, 1996

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Before: The Bailiff, and
Jurats Bonn and Vibert

The Attorney General

- v -

Michael John Allen
Jordao de Freitas Cassiano
Jose Mendonca de Vivieros

Michael John Allen

1 count of larceny as a servant (property valued at £1,687.95) (count 1).

Plea: Guilty.

Age: 33.

Details of Offence:

Whilst employed as delivery driver for G. Orange & Co., accused stole 33 kegs of Carlsberg lager valued at £1,687.95.

Details of Mitigation:

Personal circumstances, broken marriage, money difficulties, remorse, and extensive references. Also young family whom wife did not wish to look after.

Previous Convictions:

One driving offence - treated as a good character.

Conclusions: 12 months' imprisonment.

Sentence and Observations of the Court:

Very difficult case. Usual penalty is custodial. None of the mitigating circumstances, including restitution, were exceptional factors. Accused, however, considered to be carer of children, and while this was not exceptional, in the circumstances sentence of 3 years' probation with 240 hours' community service to be completed with 1 year.

Jordao de Freitas Cassiano:

1 count of receiving stolen property, valued at £409.20 (count 2).

Plea: Guilty.

Age: 43.

Details of Offence:

Defendant received from Allen eight kegs of Carlsberg lager valued at £409.20.

Details of Mitigation:

No breach of trust. Good character. Did not request the kegs to be delivered. No payment to the thief. Licence holder and the Attorney General might refer the matter back to the Licensing Bench. No financial gain. Good references, particularly from employers who would continue to employ him.

Previous Convictions: None.

Conclusions: 9 months' imprisonment.

Sentence and Observations of the Court:

Gave in to temptation. Financial penalty of £2,000 fine or 6 months' imprisonment in default of payment; 1 week to pay.

Jose Mendonca de Vivieros:

1 count of receiving stolen property, valued at £1,278.75 (count 3).

Plea: Guilty.

Age: 44.

Details of Offence:

Received from Allen twenty-five kegs of Carlsberg lager valued at £1,278.75.

Details of Mitigation:

No breach of trust. Loyalty to his employers. Good character. Great remorse.

Previous Convictions: None.

Conclusions: 9 months' imprisonment.

Sentence and Observations of the Court:

As with Cassiano, gave in to temptation and felt shame and remorse, financial penalty of £3,000 fine or 9 months' imprisonment in default of payment; 1 week to pay.

W.J. Bailhache, Esq., Crown Advocate.
Advocate H. Tibbo for Allen.
Advocate R.J. Renouf for Cassiano and
de Vivieros.

JUDGMENT

5 THE BAILIFF: The Court has found this - and we echo the comments of the Crown Advocate - a very difficult case. We agree that the usual penalty in breach of trust cases is a custodial penalty. It is important that the message should be reinforced that those who take advantage of a privileged position in order to steal from their employers will, in the ordinary course of events, go to prison.

10 In this case the Court acknowledges that there are strong mitigating circumstances in the case of Allen. None of those circumstances, that is to say his previous good character; the unfortunate illness of his child; his co-operation with the police; his remorse and his guilty plea, and the fact that he has made restitution, is, in our judgment, an exceptional factor such as would move us not to impose a custodial sentence.

20 There is, however, in this case, the added factor that the defendant's wife has a relatively short time ago left the matrimonial home, leaving him in charge of their three children aged 7, 6 and 3.

25 With some hesitation, because the Court finds it surprising that in the knowledge of her husband's predicament the wife should move out of the matrimonial home at this time and express reluctance to look after her children, we accept nevertheless that Allen is in the position of the primary carer for these three small children, who have recently suffered the trauma of their mother's departure from the home. We are not stating that this is an exceptional circumstance which will always justify the imposition of a non-custodial sentence, but it is the factor which has moved the Court in this case to temper justice with mercy and to decide that a probation order can be imposed together with an order that community service be carried out.

35 The sentence of the Court, Allen, is that you should be placed on probation for three years and that you should - in

addition to being of good behaviour during that time and living as directed by your probation officer - carry out 240 hours of community service. That community service will be completed within 12 months of this order.

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I now turn to Cassiano and de Vivieros. The Court accepts that both of you gave in to temptation and that you both feel shame and remorse for the actions which you took and for the crimes which you have committed. We think that the appropriate method of dealing with you both is to impose a financial penalty because we accept from the submissions made by your counsel and from the references which have been placed before us that these actions were out of character and will not be repeated.

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The sentence of the Court is, so far as Cassiano is concerned, on count 2, that you will pay a fine of £2,000, or, in default of payment, you will go to prison for 6 months. On count 3, de Vivieros, you will pay a fine of £3,000 or, in default of payment, you will go to prison for 9 months. You will both have one week in which to pay.

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Authorities

A.G. -v- Reid (25th June, 1992) Jersey Unreported.