R. v. Rafuse, [2004] S.J. 737, 2004 SKCA 161 (CanLII)
6 months + 3½ months pre-trial – possession of 5 counterfeit $100 notes

Mr. Rafuse pled guilty to possessing five $100 counterfeit bank notes and fraudulently impersonating another person. The trial judge sentenced him to 12 months for the possession offence and 6 months consecutive for the impersonation in addition to 3½ months pre-trial custody. The Court of Appeal lowered the sentence for the possession of counterfeit money to 6 months, but did not vary the sentence for the impersonation.

Mr. Rafuse was a passenger in a car stopped by the R.C.M.P. During a consent search, the officers discovered 5 counterfeit $100 bills in Mr. Rafuse's wallet. The counterfeit bills were of good quality. Several of the bills were examined in an earlier stop by R.C.M.P. officers who mistakenly thought they were genuine. Mr. Rafuse gave a false name on arrest, but his real identity was discovered after he was fingerprinted.

Mr. Rafuse was 21 years old, had a grade 12 education and had worked at a variety of automotive jobs. He had accumulated approximately 20 convictions starting when he was a young offender. His record was mainly for thefts, a couple of assaults, driving offences, breach of recognizance and being unlawfully at large. Mr. Rafuse was on probation at the time of the offence. He had no dependents.

The Crown noted that in 2003 counterfeiting had become the sixth most common offence in Canada, that its incidence rate had increased by 72% from the previous year, and that twice as many counterfeits were detected in circulation compared to the previous year. The Crown argued that the seriousness of the offence was compounded by its increased prevalence in the community.[1] The Crown also argued that counterfeiting caused a substantial loss to consumers and retailers and a loss of public confidence in bank notes. The Crown argued that in these circumstances the need for deterrence and denunciation for counterfeiting offences required a penitentiary sentence.[2]

The Court of Appeal held that the case law supported a sentence in the range of six months to two years less a day. The Court indicated sentences exceeding this range were rare and usually involved cases where greater quantities of counterfeit money and sophisticated operations were involved. The Court viewed the offender's involvement as being at the lower end of the scale because he was in possession of a relatively small amount of counterfeit money and there was nothing to link him to the money's production. In view of this, and because it was unclear whether the trial judge took the pre-trial custody into account, the Court lowered the sentence for the counterfeiting offence to six months. The Court did not vary the sentence for the impersonation.

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[1] *R. v. Adelman,* [1968] 3 C.C.C. 311 (B.C.C.A); *R. v. Sears* (1978), 39 C.C.C. (2d) 199 (Ont.C.A.); *R. v. Cardinal* (1982), 2 C.C.C. (3d) 490 (Alta. C.A.); *R. v. Merrill (M.P.),* [1991] O.J. No. 2680 (Gen. Div)
[2] *R. v. Bruno,* [1991] O.J. No. 2680 (Gen. Div.); *R. v. Le,* [1993] B.C.J. No. 165 (C.A.)

THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2004 SKCA 161 Date: 20041110

Between: Docket: 878

Paul Martin Rafuse

Appellant

Her Majesty the Queen

Respondent

Coram:

Vancise, Jackson & Richards JJ.A.

Counsel:

Dave Andrews, Q.C. for the Appellant
Lane Wiegers for the Respondent

Appeal:

From:	Provincial Court
Heard:	November 10, 2004.
Disposition:	Appeal allowed (orally)
Written reasons:	December 8, 2004.
By:	The Honourable Mr. Justice Vancise
In concurrence:	The Honourable Madam Justice Jackson
	The Honourable Mr. Justice Richards

Vancise J.A. (orally):

[1] Mr. Paul Martin Rafuse was charged with and eventually plead guilty to one count of having in his possession without lawful justification or excuse counterfeit money contary to s. 450(b) of the Criminal Code and one count of fraudulently personating a third person with intent to gain advantage for himself, that is, to avoid criminal prosecution, contrary to s. 403(a) of the Criminal Code. He was sentenced to twelve months imprisonment together with an order for forfeiture on count one; and six months consecutive on count two. He appeals his sentence contending that it is unreasonable and that the trial judge failed to give him credit for the time spent on remand.

Facts

[2] Mr. Rafuse (the appellant) was a passenger in a car driven by one Junaid Altaf which was stopped by members of the R.C.M.P. at Moosomin, Saskatchewan on May 4, 2004. While conducting a consent search of the person of the appellant, the arresting officer discovered approximately five counterfeit Canadian one hundred dollar bills in the appellant's wallet. A search of the vehicle resulted in the discovery of another ten thousand dollars in counterfeit Canadian one hundred dollar bills in the lining of a suitcase. The appellant denied that the suitcase was his and denied any knowledge of the counterfeit money in the suitcase. A comparison of the bills revealed that at least one of the hundred dollar bills in his possession had a sequential serial number to the money found in the suitcase. The appellant knew that Mr. Altaf was in possession of a quantity of counterfeit bills but did not know the amount.

[3] At the time of his arrest, the appellant identified himself as one Emad Borhot. Subsequent investigation by the R.C.M.P. revealed that the appellant was not Mr. Borhot. Mr. Borhot had lost his wallet some three years previously. The appellant identified himself as Mr. Borhot some hours earlier in Alberta after being stopped by the R.C.M.P. to avoid arrest on an outstanding warrant. He acknowledged his real identity only when fingerprint evidence made further denials of his identity futile.

[4] The counterfeit bills were of such good quality that when the parties were previously stopped by the R.C.M.P. in Medicine Hat, Alberta, several of the bills had been examined but the R.C.M.P. allowed them to proceed because they were of the opinion that the bills were authentic.

[5] The appellant and Mr. Altaf were arrested and applied for bail. Mr. Altaf was released on bail but the appellant was denied bail and remained in custody for some one hundred and six days before pleading guilty and being sentenced on August 17, 2004.

[6] The appellant is a 21 year old native of Calgary, single, with no dependents, has grade 12 education and has worked at various jobs in the automotive industry. He has a rather lengthy criminal record commencing in 1998 when he was a young offender. He has been convicted of: theft under $5,000 three times; theft over $5,000 once; possession of property obtained by a crime twice. The remainder of his record aside from two assault

charges relate to driving offences and failure to comply with terms of a recognizance and being lawfully at large.

Disposition

[7] The Crown sought a penitentiary term of imprisonment based primarily on general deterrence and denunciation by reason of the increase in counterfeit crime in Canada. The Crown advised that counterfeiting is now the fastest growing crime in Canada. It was the sixth most common crime in 2003 with a 72% increase in the incidence of counterfeiting over 2002. The Crown pointed out that the amount of counterfeit money detected in circulation doubled in 2002 - 2003. The Crown argues as it did before the sentencing judge that the seriousness of the offence is compounded by its prevalence and requires a long custodial sentence. As authority for that submission they cite *R. v. Adelman*[3]; *R. v. Sears*[4]; *R. v. Cardinal*[5]; *R. v. Merrill* (M.P.).[6]

[8] The Crown contends that counterfeiting results in a substantial economic loss to retailers and consumers. It also points to the economic risk associated with the public's loss of confidence in banknotes as a result of counterfeiting. The Crown argues that a penitentiary sentence is warranted in the circumstances of this case based, as previously noted, on the principles of deterrence and denunciation. It relies on *R. v. Bruno*[7]; *R. v. Le*.[8]

[9] In addition, the Crown points out that the appellant has a significant criminal record having been convicted of some twenty offences over five years, several of which are theft related and therefore akin to or related to counterfeiting.

[10] The Crown also points out that the appellant's crime was aggravated by reason of an unrelated offence - personation and that the appellant was on probation at the time of the offence.

[11] The appellant on the other hand contends that the trial judge erred in imposing a sentence which was not proportionate to similar offences given his degree of culpability and his unrelated criminal record. He points out he was in possession of only five hundred dollars of Canadian counterfeit money of the approximately ten thousand dollars of counterfeit Canadian money found in the car in a suitcase which did not belong to him. In addition he contends that the trial judge did not give him credit for the approximately three months he spent on remand.

[12] An examination of the jurisprudence regarding sentences for similar offences in similar circumstances reveals that the range is from six months to two years less a day. There have been cases which exceed two years less a day but they are rare. The sentences

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[3] [1968] 3 C.C.C. 311 (B.C.C.A.).
[4] (1978), 39 C.C.C. (2d) 199 (Ont. C.A.).
[5] (1982), 2 C.C.C. (3d) 490 (Alta. C.A.).
[6] (1998) 174 Sask. R. 299 (Q.B.).
[7] [1991] O.J. No. 2680 (Gen. Div.).
[8] [1993] B.C.J. No. 165 (C.A.).

imposed are adjusted upward to the high end depending on the amount of counterfeit money involved and in cases involving large amounts of counterfeit money and a sophisticated operation may exceed two years.

[13] The offence for the offender in this case was at the lower end of the scale, particularly having regard to the fact that there is nothing to connect the appellant to the production of the counterfeit and that he was in possession of a relatively small amount of the counterfeit money.

[14] In our opinion, the sentence was demonstrably unfit given the amount of counterfeit money which the appellant had in his possession and his lack of involvement in the overall counterfeiting scheme. When one examines the sentences for counterfeit or being in possession of counterfeit money on which the Crown relies for a penitentiary term, it is evident that the offenders in those cases are involved in counterfeiting large sums of money such as in *R. v. Bruno*[9], where a thirty month sentence of imprisonment was imposed for participating in an elaborate scheme involving a million dollars of counterfeit money. Lesser sentences are routinely imposed where smaller sums are involved and the accused's involvement in the offence is minor. See *R. v. Rachid*,[10] and *R. v. Berntsen*.[11] It is usual for a convicted offender to receive credit for time spent in remand prior to conviction. See *R. v. Wust*[12]; *R. v. Cope*.[13] It is not clear whether the sentencing judge took that into account in sentencing the appellant.

[15] In our opinion, a fit sentence in the circumstances of this case having regard for the amount of counterfeit money involved, the relatively minor implication of the accused in the scheme and the amount of time spent on pre-trial remand would be six months in prison.

[16] We are not convinced that the six months consecutive imposed by the trial judge in connection with the personating of Mr. Borhot is demonstrably unfit and the sentence appeal with respect to that offence is dismissed.

[17] We feel obliged to comment on certain submissions made by the appellant's counsel during this appeal. He pointed out that the conditions under which his client must serve the sentence in the Regina Correctional Institution are deplorable. He further pointed out that the appellant is confined for his own safety as a result of the actions of certain gangs and gang related activity in the institution. As was stated in R. v. Tabor,[14] in a case involving an application for judicial interim release where the accused alleged he was threatened with serious bodily harm - "the responsibility for his safety in the institution rests with the prison authorities and they must take all steps necessary to ensure that the appellant is not harmed while he is in the institution." We are grateful to counsel for

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[9] *Supra,* note 5.
[10] [1994] O.J. No. 4228 (Ont. Prov. Div.) (QL).
[11] [1988] B.C.J. No. 1180 (C.A.) (QL).
[12] [2000] 1 S.C.R. 455.
[13] (1987), 59 Sask. R. 161 (C.A.).
[14] [2003] S.J. No. 421 (C.A.) (QL).

having drawn this situation to our attention, but it is not a factor to be taken into account in imposing a fit sentence.

[18] The sentence appeal is allowed to the extent indicated.