

ROYAL COURT
(Samedi Division) 185

15th September, 1994

Before: The Bailiff, and Jurats
Coutanche, Blampied, Bonn, Hamon,
Le Ruez, Vibert, Herbert, Rumfitt,
and Potter.

The Attorney General

- v -

Alan Thomas Campbell

Sentencing by the Superior Number, following guilty pleas before the Inferior Number on 9th September, 1994,
to:

2 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972. (Count 1: Diamorphine; count 2: cannabis resin); and

2 counts of possessing a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978. (Count 3: Diamorphine; count 4: cannabis resin).

AGE: 22

PLEA: Guilty

DETAILS OF OFFENCE:

Accused was recruited to go to Manchester in order to import drugs to Jersey. He took delivery of 4 packets, 2 of cannabis and 2 of heroin. The 2 heroin packets were wrapped in opaque packets. He secreted these in his rectum but was stopped at Jersey Airport on arrival. He initially denied matters but an x-ray showed the presence of the packets. He then stated that he had done this for nothing on the spur of the moment whilst over in Manchester. Subsequently, after charging, he admitted that he made the run to Manchester specifically and was to be paid between £100 and £200. The heroin totalled 11.68 grammes, 1 packet being 46% by weight with diamorphine and the other 50%. The street value of the heroin was £3,504. If cut to 10% diamorphine, its potential street value was £16,000. Cannabis totalled 21.30 grammes worth £128.

DETAILS OF MITIGATION:

He believed that it was cannabis having enquired of the supplier. The Court must sentence on this basis. Bilinski, (1988) 9 Cr.App.R.(S) 360, should be applied. He was a first offender for drugs and was young. He was in financial difficulty at the time. He was not close to the source of supply and deterrence was not appropriate for such couriers.

PREVIOUS CONVICTIONS:

One for drink driving.

CONCLUSIONS:

Count (1): 5½ years' imprisonment.
Count (2): 1 year's imprisonment, concurrent.
Count (3): 5½ years' imprisonment, concurrent.
Count (4): 1 year's imprisonment, concurrent.

SENTENCE AND OBSERVATIONS OF THE COURT:

Conclusions granted. Court could depart from Bilinski. In general an erroneous belief as the nature of the drug would not be a mitigating factor. In relation to submission re: R.v. Aranguren, (23rd June, 1994) T.L.R., unlike the English Court, the Jersey Court had always had regard to both weight and value and would continue to do so.

The Attorney General.
Advocate P. Landick for the accused.

JUDGMENT

5 THE BAILIFF: The accused in this case has pleaded guilty to four counts: two of importing a Class A drug and a Class B drug and two of possession of a Class A and a Class B drug with intent to supply. The intent to supply charges were part of the link in the chain - to drop off what he was intending to import at a particular place.

10 The legislature of this Island has laid down substantial penalties for the importation of and for the possession with intent to supply Class A drugs and to a lesser extent Class B drugs. It cannot be said too often that every illegal drug imported into the Island increases the amount of drugs "washing around" among those who are tempted to take them.

15 But this particular case has required the Court to think about two principles advanced, one by the Attorney General and one by counsel for the accused.

20 The facts of the case are quite simple: the accused was stopped by the Customs and eventually (although not at the beginning) a number of packages were found on him - they were in his rectum. They were subsequently analysed and were found to contain a total of 21.30 grams of cannabis resin and 11.68 grams

of heroin. 6.51 grams of the heroin contained 46% by weight of Diamorphine and 5.17 grams of it contained 50% by weight of Diamorphine. The street value of the cannabis resin at £6 per gram was £128 and the street value of the heroin was £3,504. However, if the heroin had been further "cut" to 10% Diamorphine, its potential street value would have been approximately £16,000. The heroin had been packed in two balloon packages and the cannabis in two cellophane packets.

First, H.M. Attorney General invited the Court to consider (but not to apply) the principles set out in the English Court of Appeal case of Bilinski (1988) 9 Cr.App.R.(S.) 360. That case is an authority in the English jurisdiction for finding that it may be a mitigating factor in sentencing that the accused believed he was importing a less dangerous drug than in fact he was. That case overturned a judgment of Steyn J and it is important, I think, that I should read out what Steyn J said:

"It is pointed out that you believed that the drug was cannabis which you knew to be illegal to import into this country. It is said that you did not know that it was heroin. I regard that and I make that clear as irrelevant. If I were to take that into account then every courier and every dealer found in possession of heroin would be able to say that he thought it was not a Class A drug. In a practical world the courts will as a matter of policy not regard such matter as reducing moral blameworthiness. If it had been relevant I would have directed an issue to be tried on it but I find it is irrelevant".

The Court of Appeal rejected that argument, as I have said, and the Attorney General has asked us not to follow Bilinski. However the Court has had put before it a Jersey case - a fairly recent case - of Stewart -v- A.G. (18th April, 1994) Jersey Unreported C.of.A. On p.3 of that Judgment there is indeed a reference to Bilinski as follows:

"Reference has been made to the case of R. -v- Bilinski (1987) 9 Cr.App.R.(S.) 360 and to the relevant extent of an accused's knowledge. The Judgment of Lane LCJ in Bilinski contains this passage which was mentioned by the Bailiff in the present case:

'Where the defendant's story is manifestly false the judge is entitled to reject it out of hand without hearing evidence. Whether that is so or not, we take the view that the exercise of only a small degree of curiosity, enquiry or care would have revealed the true nature of the drug in this case

and that accordingly the mitigating effect of the belief, if held, was small'.

5 *The Royal Court found that the mitigating effect of that belief in this case, if it was held, was small."*

10 We were invited by the Attorney General to say that, in general, an erroneous belief cannot, in this Court, be a mitigating factor. But the Attorney General went on to qualify that statement by saying that he did not expect the Court to lay down a rigid rule.

15 It is perfectly true that Bilinski was referred to in the case of Stewart, which I have just mentioned, but the argument as to whether Bilinski should be applied or not does not appear to have been canvassed either before the Royal Court in the first instance, nor before the Court of Appeal in the Stewart appeal. That being so we have felt free to consider whether we ought or ought not to follow the principles of Bilinski.

20 We have come to the conclusion that we should not follow them, as a matter of general practice, but rather would prefer to say - as I now say in the name of the Court - that in general an erroneous belief is not to be held to be a mitigating factor. But we say this will not be a rigid rule; we do not wish to fetter ourselves by doing that. Clearly, even the Attorney General, by giving the example of smuggling in a motor car, is indicating to the Court that even if the Court refused - as it now has - to accept Bilinski as something that ought to be followed in this Court, there could be a very exceptional circumstance which would entitle us to consider the effect of a person's belief on the proper sentence.

35 The second matter is an equally interesting point raised by the defence. Mr. Landick has submitted that, whereas the Court in the past has based the level of sentencing to some extent on the street value of the imported illegal drugs, the proper test should be the weight and he has cited to us a report from "The Times" of 23rd June, 1994, referring to five cases before the Court (R. -v- Aranquren & Ors. (23rd June, 1994) TLR). In these cases - there was one which was the subject of the ruling but the others were followed subsequently - the Lord Chief Justice and the Court held that the proper way in England was to consider not the street value but the weight.

45 It has never been the practice of this Court to have regard solely to one or the other. This Court has had regard to both the weight and the street value, it has never been disjunctive. It has been conjunctive and the Court takes both into account. The Court cannot sentence purely on the market principle alone and it must be stressed, as I said at the opening, that the effect on Jersey, of importing even a small amount, is far greater in

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proportion than it would be in England. Therefore we do not think that we are able to follow your invitation, cogently put, Mr. Landick, that we should change our general sentencing principle in that respect.

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As regards this accused, a number of mitigating factors were advanced to the Court, and they were considered carefully by the Jurats. The Court is mindful and accepts that it is in a difficult position when it comes to sentencing someone who has - for the purposes of this case - a clean record and who has been used as a courier. But the Court cannot overlook the fact that if it was true, as counsel has advanced, that the accused believed that all he was carrying was cannabis which had a street value of something less than what he was being paid to transport it, then it is quite obvious that the person to whom he was going to transfer it was not going to make any money at all. Secondly, of course, he had had the opportunity, as the Crown said, to examine the balloon packages to satisfy himself what they were. Thirdly, he had been a taker of cannabis and knew perfectly well what containers were used to package that substance.

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The Court therefore - even if it were to apply Bilinski and it has not sought to do so - would have regarded his belief as being of the minimal relevance to this case.

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Under the circumstances, the Court has decided that the conclusions of the Attorney General should be granted. I have to say that one Jurat considered that five years would be the appropriate sentence.

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Accordingly you are sentenced to 5 $\frac{1}{2}$ years' imprisonment on counts 1 and 3; and on counts 2 and 4, you are sentenced to 1 year's imprisonment, all concurrent with each other, making a total of 5 $\frac{1}{2}$ years' imprisonment. There will be an order for the forfeiture and destruction of the drugs.

Authorities

R. -v- Aranguren & Ors. (23rd June, 1994) T.L.R.

Fortson: "The Law on the Misuse of Drugs": p.p. 255-258.

A.G. -v- Vellam (5th March, 1993) Jersey Unreported.

Bucknell & Ghodse: "Misuse of Drugs": p.p. 124-125.

Stewart -v- A.G. (18th April, 1994) Jersey Unreported C.of.A.

A.G. -v- Lawlor (25th April, 1994) Jersey Unreported.

A.G. -v- Little (25th July, 1994) Jersey Unreported.

Bilinski (1988) 9 Cr.App.R.(S.) 360.