11 pages.

ROYAL COURT
(Samedi Division) 247B.

23rd December, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Gruchy and de Veulle.

The Attorney General

- v -

Francis Wilfred Joseph Dowse,
Philip Heys.

FRANCIS WILFRED JOSEPH DOWSE.

1 count of — being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:

Count 1 : diamorphine.

The Crown was given leave to add the following supplementary count which to the indictment on 16th December, 1996:

1 count of — possession of a controlled drug with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 3 : diamorphine.

PHILIP HEYS.

1 count of — being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:

Count 2 : diamorphine.

1 count of — possession of a controlled drug contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:

Count 4 : cannabis resin.

Challenge by counsel for Heys to the admission as evidence of his first Police Question & Answer Interview and of the record of a conversation he had with Police Officer Megaw thereafter and subsequent to a meeting he had with his mother and brother, on the grounds of oppression and/or inducement.

Challenge by counsel for Heys to the admission of his second Police Question & Answer Interview on the grounds of his having taken 7 grams of cannabis and having been given 20mgs of Temazepam prior thereto.
This evidence was admitted.

The Solicitor General.
Advocate C.J. Scholefield for F.W.J. Dowse.
Advocate H. Tibbo for P. Heys.

JUDGMENT

THE DEPUTY BAILIFF: It will not be necessary to review all the details of this case, on this the third *voir dire*.

There are three strenuous attacks made by Miss Tibbo for Heys. She argues that the two Question and Answer sessions made by Heys, whilst in police custody, and the intervening matters, some recorded by Detective Constable Megaw, should be excluded for various reasons.

At the conclusion of Counsel's address on Friday, I gave my decision, which was that all the matters to which objection was taken, would be admitted. This was in order to give Counsel time, over the week-end, to edit any passages which needed editing, so that this trial, set down for three days last Monday, could be progressed. I said I would give a short reasoned Judgment today and therefore, still in the absence of the Jurats, I now proceed to do so.

The over-riding objection to all the statements and admissions made by Heys in police custody, was that they were made whilst he was under the influence of a concoction of cannabis, alcohol and temazepam. For that reason alone it is argued that the statements were not voluntary and were also in breach of paragraph 11.3 of the Code of Practice, and I repeat it now although I have already stated it in the earlier *voir dire*. In de la Haye -v- AG (24th April, 1996) Jersey Unreported, CofA, the Court of Appeal said this in relation to that Code:

> ***"One difference between R. -v- Quinn and this case is that in England Code D has statutory force, so that breaches of it are breaches of the law, whereas here the rules contained in the Manual of Guidance are rules of guidance only. We do not, however, attach any weight to this difference. The rules are framed for the fundamentally important purpose of achieving fairness in the conduct of identification parades, and breaches of them ought not to be treated by the Courts in any way***

different from the way in which breaches of the Code are treated in England".

That was Code D, and we are dealing here with Code C. I am certain that the strictures of the Court of Appeal apply equally in this case. The relevant part of the code says that no person who is unfit, through drink or drugs, to the extent that he is unable to appreciate the significance of questions put to him, and his answers, may be questioned about an alleged offence, whilst in that condition, except in accordance with annex C. There is reference in the annex to the fact that the police surgeon can give advice about whether or not a person is fit to be interviewed. This becomes relevant in the terms of the application.

Heys says that before he was arrested, he smoked a cannabis cigarette whilst in his flat. That may be so, but I have to recall that there was another cannabis abuser in the flat at the material time. A used roach end was found when the police eventually entered the flat; he was allowed, by the policeman who accompanied him back to the flat and who was to search for drugs, to drink an already cooling cup of coffee which contained cognac, and which he had left behind in order to go and meet Dowse originally.

His flat mate, Mr. Gara, gave him assistance helping him to drink it as Heys was handcuffed at the time. According to Heys and Mr. Gara there were packets of cigarettes on the table. One of these packets contained, apparently quite obviously, according to Mr. Gara, a piece of cannabis weighing some 7 grams.

Heys says that he asked a police officer if he could take one of the packets of cigarettes, a lighter, an ash tray and some coffee to the lounge table. There is no record in the search log of a packet of cigarettes and Miss Tibbo says that that fact is indicative of the lack of a proper formality. He was, apparently, allowed to take the cigarettes and other articles to the table and then when a door bell rang and the officer watching him was distracted, he said that in a flat, swarming with policemen, forming what is called a dedicated search team, he extracted the piece of cannabis, apparently about the size of a thumb nail, bit it in half and swallowed it.

I heard medical evidence from Professor Malcolm Lader, Professor of Clinical Psychopharmocology at the Institute of Psychiatry in London, and Dr. Holmes, the Police Surgeon and from Dr. Nikki de Taranto, who was called by the defence, and who is a locum consultant of Forensic Psychiatry at the Hackney Regional Secure Unit. Heys told me that he had swallowed 7 grams of cannabis before. It was some six months after he first started taking cannabis. Then, he had had trouble walking, his head was

spinning and he had a permanent hangover; it was so bad that he did not go to work for three days.

I must recall that Heys had been strip-searched and found to have in his possession already, a personal amount of cannabis so that another personal amount of cannabis would not have made his plight on that score any more perilous that it was. We have a slight conflict of evidence between Mr. Gara and Heys as to whether the packet of cigarettes fell to the floor, but the suspension of disbelief has to be palpable.

Mrs. Heys, the mother of the accused, at the meeting with her son in the police station said that if she had not known better, she would have thought that her son had been drinking. She told me that his arms were going all over the place and his eyes were glazed. Mrs Heys saw her son between 7.30 and 7.40 and yet at 9.14 when Dr. Holmes saw him, at his request, less than two hours later, he was, according to an experienced police doctor, quite normal and quite relaxed, although he appeared anxious. That is understandable. When asked by Dr. Holmes how he was feeling he said something like *"how do you think I'm feeling, I'm looking at a long term"*. Dr. Holmes noticed nothing untoward. Both the very experienced drugs officer from Strathclyde, Sergeant Gilchrist, who gave evidence before me, and Professor Lader, had no doubt that whatever the tolerance of the regular cannabis abuser, there would be symptoms of some kind showing after this amount of cannabis had been swallowed. I must recall that D.C. Megaw and W.D.C. Le Neveu, who was at the first interview, and D.C. Liron who was at the second interview, were all adamant that Heys was not under the influence of drink or drugs. He was, said D.C. Megaw, definitely not under the influence, nothing alerted him.

D.C. Megaw noted that Heys appeared anxious at the first interview. At one point a tear appeared in his eyes but he did not cry. He appeared to be thinking hard before he said *"no comment"* to several of the questions but when he made his second statement he appeared to have unburdened himself somewhat and, according to the evidence of D.C. Megaw, to be relieved to be telling what, he said, was now the truth.

We must recall that he spoke without being overheard to Advocate Crane before he made his first interview. The first interview began at 12.14 on the 24th February, 1996, - he had been arrested on the 23rd February, 1996 - and ended at 18.20. It begins with this passage:

> *"Philip, I wish to ask you some questions about the incident for which you were arrested yesterday evening, Friday 23rd February, 1996. Firstly, I must remind you that you are not obliged to say anything unless you wish to do so, but anything you do say may be taken down in*

writing and may be given in evidence. Do you understand"?

"Yeah".

"You have spoken to Advocate Crane on the telephone and taken legal advice, are you happy now for this interview to continue"?

"Yeah".

"You may seek further legal advice at any time while in police custody. Do you understand"?

"Yeah".

"For the purposes of this interview I'm Acting Detective Sergeant Steven Megaw and my colleague is Detective Constable Tracy Le Neveu. As I've said I want to speak to you concerning last night. Is there anything you want before I begin this interview"?

"No".

A cup of tea was offered and taken at 15.09, and he was given a thirteen minute break. There was a further break at 4.35 until 5 p.m. when he was again informed of his rights. At the end of the interview he was asked:

"Do you have any complaints about the way you've been treated whilst in policy custody"?

"No".

He initialled each question and answer and signed at the foot of the interview and at the foot of each page of the interview. His handwriting appears, to me, to be quite normal.

It was emphatically denied by the officers present that at any time he said to them that his head was spinning. Indeed, D.C. Megaw said that if he had said those words he would have immediately stopped the interview.

I do not believe, for the purposes of this *voir dire* that in any event, Heys took this cannabis. But, even if he did, there was nothing in the interview that appears drug-induced and in the second interview the 20 grams of temazepam is not a relevant issue in the light of the scientific evidence I have heard. Indeed, I have to say, that the second interview which began at 8.09 on Sunday 25th and ended at 9.24 that day, reads as coherently and as logically in its statements, as the first.

That interview starts with these words:

"Philip, you stated last night, 24th February, when I placed you in the police cells, that you wished to speak to me this morning about the circumstances surrounding your arrest on Friday 23rd February. I must remind you that you are still under caution and that you are not obliged to say anything unless you wish to do so but anything you do say may be taken down in writing and may given in evidence. Do you understand"?

"Yeah".

"You are entitled to legal advice. Do you wish to speak to a legal adviser"?

"No".

There was a break at 8.52 for a cup of tea and a bacon sandwich and the statement ends like this:

"Do you wish to make a statement"?

"I just made it".

"Do you have any complaints about the way you've been treated whilst in policy custody"?

"No".

"Will you read the record of interview, initial after each question and answer and sign at the bottom of each page"?

"Yes".

Each page is signed, the foot of the interview is signed and each question and answer is initialed. I can personally see no difference in the initials and the signature from that of the first interview.

There are also allegations of repression and inducement to be resolved. Heys says, firstly, that some of the remarks made to him by D.C. Megaw were made in the absence of D.C. Le Neveu as he was leaving the interview room. But the two officers, in my view, and having listened to what they had to say, heard everything that was said together.

At one point, when the first interview was concluded, D.C. Megaw said that he made it quite clear to Heys that he did not believe what he had been saying. He thought that he was lying and said that if he lied to the police, he would be shown to be a

liar. He said that he drew Heys' attention to the acting Bâtonnier's notice that was displayed in the interview room and is approved by the Jersey Law Society. Miss Tibbo, however, stated categorically that she did not hold, in any way, that that was an inducement.

D.C. Megaw also told Heys that he was to be processed to go to La Moye the next day and if he was going to say something, it would have to be soon if it was to be said at all. Heys told me that what he was told by D.C. Megaw was this:

> *"Right Phil, I think you've told me a complete load of crap so far. In my experience if you go in front of a Judge and Jurats I can assure you that you will get ten or twelve years with no time off. What you've told me so far, a five year old would not believe".*

He then asked Heys and Heys said he didn't want to change his story.

Heys said that during the meeting with his mother and his late brother, he said, pointing to D.C. Megaw *"he's told me unless I admit to some part of this, then I'll get ten to twelve years".* He also said that D.C. Megaw talked about damage limitation, an expression which D.C. Megaw said he had never used, and that he said: 'if you don't admit to being part of this drugs ring, you'll get the full ten to twelve years with no time off. You will be protected if you name names'. Heys said he was therefore pressurised to give a statement. He was told, he said, that if he co-operated, his ten to twelve year term would be changed to four or five years and Mrs. Heys said that Heys had told her this while pointing at the CID man.

Those statements, if they are true, are both examples of oppression and inducement. I must record, for the purposes of this *voir dire*, that fifteen years ago Mrs. Heys was convicted of attempting to pervert the course of justice in somewhat similar circumstances.

We have looked at the 42nd and 41st editions of Archbold. There is nothing to distinguish them for these purposes and I need only say that they, of course, pre-date the Police and Criminal Evidence Act in the United Kingdom. In R. -v- Ibrahim (1914) AC 599 p.609, appear the hallowed words of Lord Sumner:

> ***"It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority".***

In Rennie (1982) 74 Cr.App.R. 207, the Court of Appeal said this:

> *"Very few confessions were inspired solely by remorse. Often the motives of an accused person were mixed and included a hope that an early admission might lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if prompted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be rendered inadmissible. That was not the law. In some cases the hope might be self generated, if so, it was irrelevant even if it provided the dominant motive for making the confession".*

If there is to be a breach of the code there must be a real and significant breach. All the arguments have been exhaustively canvassed before me. On the authority of Martin Priestly (1960) 50 Cr.App.R. 183, I do not conceive that D.C. Megaw's version of what he said, which I believe to be the true version, confirmed in my view, adequately by W.D.C Le Neveu, could have been an inducement.

On the question of impropriety, I found this passage from Fulling (1987) 85 Cr.App.R. 136 helpful. In that case the Court said:

> *"Bearing in mind that whatever happens to a person who is arrested, is, by its very nature, oppressive, I am quite satisfied that in Section 76 2A the Police and Criminal Evidence Act 1984 the word oppression means something which is above and beyond that which is inherently oppressive in police custody and must purport some impropriety, some oppression actively applied in an improper manner by the police. I do not find that what was done in this case can be so defined and in those circumstances I am satisfied that oppression cannot be made out on the evidence I have heard in the context required by the statutory provision. I go on to add simply this, that I have not addressed my mind as to whether I believe the police or the defendant on this issue, because my ruling is based exclusively upon the basis that even if I wholly believe the defendant, I do not regard oppression as having been made out. In those circumstances, her confession, if that is the proper term for it, the interview in which she confessed, I rule to be admissible".*

That case is helpful because it moves us away from the more stringent attitude which prevailed in England and which the Court

of Appeal in de la Haye has approved for the voluntary Code to be regarded as law.

It really only needs the prosecution to prove beyond reasonable doubt that the question which was stressed as prime importance by the House of Lords in DPP v. Ping Lin (1975) 3 All ER 175 follows. I have looked in depth at many cases but each case must turn on its facts. In most of the cases we have agreed statements which fall to be interpreted in law. This particular case is unusual because the statements are not agreed and I have to decide which version I believe to be true.

However carefully I listen to Miss Tibbo, I cannot accept that the statements by Heys of what he alleges D.C. Megaw said to him are credible. I have had the advantage of seeing all the witnesses and in particular Heys and D.C. Megaw in the witness box. The genuine controlled anger and the surprise expressed by D.C. Megaw when these alleged statements were made to him, leave me in no doubt that D.C. Megaw and the other prosecution witnesses have the version which is to believed.

In the conflict of the inducement of the ten years being reduced to five, I prefer the prosecution version that it was never said. There is no question in my mind of the police officers concerned having been guilty of trickery or oppression, or that they acted unfairly towards the appellant or that they acted in a manner which could be thought to be morally reprehensible, or which, in my view, breaches the Code of Practice in any substantial way. Nor, in my view, can the words spoken by Mrs. Heys in the meeting with her son - *"tell the truth or you'll be alright"* - be an inducement in the legal sense of that word.

I cited from R -v- Walsh (1990) 91 Cr. App. R. 161 in an earlier *voir dire* and in that case the Court said:

> ***"So far as a defendant is concerned it seems to us also to follow that to admit evidence against him which has been obtained in circumstances where these standards have not been met, cannot but have an adverse effect on the fairness of the proceedings. This does not mean, of course, that in every case of a significant or substantial breach of section 58 of the Code of Practice the evidence concerned will automatically be excluded. Section 78 does not so provide. The task of the Court is not merely to consider whether there would be an adverse effect on the fairness of the proceedings but such an adverse effect that justice requires the evidence to be excluded".***

There were certain statements which were not included in the running log at the police station. Those were minor matters and those minor matters, in my view, do not breach the Code. In my

view I am convinced, and I remain convinced that the statements made by Heys were voluntary and are therefore admissible.

Authorities

de la Haye -v- A.G. (24th April, 1996) Jersey Unreported CofA.

R. -v- Ibrahim (1914) A.C. 599.

Rennie (1982) 74 Cr. App. R. 207.

Priestly (1966) 50 Cr. App. R. 183.

Fulling (1987) 85 Cr.App.R. 136.

DPP -v- Ping Lin (1975) 3 All ER 175.

R. -v- Walsh (1990) 91 Cr. App. R. 161.