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ROYAL COURT
(Samedi Division) 10.

20th January, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles, Bonn, Gruchy, Le Ruez,
Vibert, Herbert, Rumpfitt, Potter, de Veulle, and
Quérée.

The Attorney General

- v -

Francis Wilfred Joseph Dowse,
Philip Heys.

FRANCIS WILFRED JOSEPH DOWSE.

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 27th December, 1996, following conviction on a not guilty plea to:

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.

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.

[On 16th December, 1996, the Crown was given leave to add count 3 to the Indictment as a supplementary count].

Age: 47.

Details of Offence:

Dowse flew to Gatwick and back. That evening he set out to meet Heys. Dowse had in his possession 471 grams of heroin (street value £141,000). Heys had £1,900 cash. Heys admitted he was to give the money to Dowse. He would put the packets in dustbins at his home for collection.

Details of Mitigation:

Age. Breakdown of marriage. Financial problems.

Previous Convictions: None relevant.

Conclusions:

count 1: 13½ years' imprisonment.

count 3: 13½ years' imprisonment, concurrent.

Sentence and Observations of the Court: Conclusions granted.

On appeal: conviction for importation quashed. Sentence for possession with intent to supply reduced to 12 years. [*see Jersey Unreported Judgment of 11th July, 1997*].

PHILIP HEYS.

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 27th December, 1996, following conviction on a not guilty plea to:

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.

Conclusions:

count 2: 13½ years' imprisonment.

count 4: 1 month's imprisonment, concurrent.

Sentence and Observations of the Court:

count 2: 12½ years' imprisonment.

count 4: 1 month's imprisonment, concurrent.

[Conviction quashed on appeal: *see Jersey Unreported Judgment of 11th July, 1997*].

The Solicitor General.

Advocate C.J. Scholefield for F.W.J. Dowse.

Advocate H. Tibbo for P. Heys.

JUDGMENT

(Application by the Crown under Article 3 of the Drug Trafficking Offences (Jersey) Law, 1988.)

The accused Heys was arrested with £1,900 in his possession which, it was later admitted, was destined for Dowse as payment for drugs. Was the £1,900 a payment or reward from drug trafficking under Article 4 and therefore subject to a confiscation order under Article 3).

THE DEPUTY BAILIFF: Article 4 of the Drug Trafficking Offences (Jersey) Law, 1988, which is headed "Assessing the Proceeds of Drug Trafficking" says this at sub-paragraph (1)(a):

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ARTICLE 4.

Assessing the proceeds of drug trafficking.

(1) *For the purposes of this Law -*

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(a) *any payments or other rewards received by a person at any time (whether before or after the commencement of Article 3) in connexion with drug trafficking carried on by him or another are his proceeds of drug trafficking.*

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I would merely say this: it seems to us that the payment need not be received as a reward as such; it suffices that it was received in connection with drug trafficking carried on by the recipient or another and therefore the £1,900 in our view is forfeit.

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JUDGMENT
(sentencing decision)

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The story which the accused asked the Court of trial to believe was one of inherent improbability, but because Advocate Scholefield for Dowse has set out some of the facts that he argued in mitigation, I have explained to the learned Jurats the background of the case as I understood it, coupling with it the conclusions of the Court.

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At the relevant time, Dowse was a self-employed sewing machine salesman. His business was not thriving. Heys was essentially a caretaker and a self-employed builder. In January, 1996, he was working on the refurbishment of a pub in Nantes. He would return to Jersey at weekends. He came back to Jersey at 6.20 on the evening of Friday, 23rd February. He had not worked between 4th and 17th February, and Heys and Dowse had spoken on the telephone on 13th and 15th of that month.

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On the morning of that Friday Dowse travelled to London. He was observed throughout part of his journey by police officers, obviously because he was under suspicion. He went on the Gatwick express to London/Victoria and then he returned to Jersey at approximately 5.30 that evening.

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In Heys' flat was a Mr. Gara, who acted as a caretaker for Heys whilst he was away and looked after his cats. There had been an attempt to contact Heys on his telephone. Eventually, Heys and Dowse, who were friends, arranged to meet. Heys was seen to leave his property at 7.14 and run down Mont Millais. He telephoned Dowse from a public telephone box alongside the shop owned by Houquet Poole.

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At 7.22 that evening, Dowse set out to meet Heys and when they were stopped by police drugs squad officers in Old Don Road, Dowse had two packages of heroin, enough to make 3,768 score bags, with a value of some £113,040. Heys had a bundle of £1,900 in cash with a number of English £50 notes included in it. In another pocket, he had some sterling and £150 in French francs. He also had a nugget of cannabis in his pocket.

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The defence raised on those facts by Dowse and Heys was of chameleon complexity. When arrested Dowse made no comment in respect of the majority of questions put to him. Heys originally said that he had gone to meet Dowse, hoping to get some cannabis from him. However, during a second interview conducted the next day, (25th February) he said that he was to meet Dowse and give him the £1,900 which he had been given by an unidentified third party. He said he was to leave the packages in a dustbin at his property for collection by, or on behalf of, the same third party. He said that he had imagined the contents of the packages to be drugs, but he did not know what type. He further stated that he was to be paid £500 for his part in the handling of the drugs.

The defence was that Dowse was in the habit of taking packets of diamonds to London to help South Africans caught by the fiscal laws of that country. His contact was Dr. Ambrose, his general practitioner, to whom he had given the keys to his flat. When he arrived home he would sometimes find a packet on his kitchen table. The first consignment he said that he had taken to London contained diamonds because he said that he had required and been given ocular proof. When in London he said that he would go to Victoria Station and there meet a man called Jan, who had been well described to him. He would then deliver the diamonds and payment would be made in due course for that run. On this day, however, dressed in his business clothes and carrying a briefcase, he had gone to London purely for pleasure to see the 'Schindler's List' Exhibition at the Imperial War Museum. He had no diamonds with him; a fact that he had difficulty in explaining to Jan, who had apparently been somewhat angrily waiting for him. It was only when he returned to his home in Jersey and received the telephone call from Heys that, to his surprise, he discovered the two packets in a kitchen cupboard. Knowing by feel that they were not diamonds, he was hoping to persuade Heys to drink not at the 'Bagot Inn' but at the 'Admiral' in James Street which Dr. Ambrose frequented. Sadly, unbeknown to Dowse, Dr. Ambrose had been placed under curatorship in November of the previous year and was now dead.

We also heard from a convicted drug dealer who said that he had been second in command in the chain. This convicted drug dealer told us that because of a shortage of supply and an emergency situation heroin had been delivered to Dowse by mistake by a gang which dealt in Jersey in drugs, diamonds and guns.

Heys told the Court that the money, some of which was in English £50 notes, was the proceeds of the payout of his thrift club, but as the thrift club manager told the Court, the club banked at the TSB bank where English £50 notes were not paid out. Heys also said that when he got back to his flat, having been taken there by police officers after his arrest, and during a search by the drugs squad with a 'sniffer' dog, he took from a packet of cigarettes on a table 7 grams of cannabis which had been hidden there and swallowed the cannabis, after having bitten it in half. It will be recalled that he was found to have in his pocket, when arrested, 5.49 grams of cannabis. Consequently, he said that when he made his second statement that evening, he was quite incapable of clear thought. The effect of swallowing the cannabis was exacerbated by the fact that that evening, Dr. Holmes the police doctor, who,

incidentally, saw nothing untoward in his behaviour, had prescribed a mild dose of temazepam to help him sleep.

5 Those were the essential facts, as the Court understood them, and upon which they based their decision.

Both Dowse and Heys have previous convictions; Dowse is 47, Heys is 34, but as far as drugs are concerned they are first offenders.

10 We have had cited to us several cases, including passages in Campbell, Molloy, MacKenzie -v- AG (1995) JLR 316 CofA. Because, at one stage of his address, Advocate Scholefield told us that a Dutch Inspector of Police had made some strictures in the 'Jersey Evening Post' last Saturday about the effectiveness of long sentencing, I need
15 to repeat the words, it seems to me, for those who wish to hear them of the Court of Appeal in the case of Campbell. The Court there said at p.144:

20 *"We desire therefore to make absolutely clear what is the policy of the courts in this jurisdiction in relation to the sentencing of offenders who import or deal in drugs on a commercial basis. That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking".*

25 We have considered the further matters laid out in the case of Campbell and, in particular, of course, we have had reference to the case of Fogg -v- AG (1991) JLR 31 CofA. We have also considered very carefully the other cases cited to us by counsel, including that of AG -v- Tarouilly (2nd December, 1996) Jersey Unreported, but it seems to
30 us, after reflection, that fourteen years is still a proper starting point for a serious crime of this nature. We add, having regard to the records, that we are regarding each of the accused as first offenders.

35 Heys' situation is particularly tragic, however, and we have read of his personal family situation with deep concern. We have also considered his references which have been clearly made with the same feeling by those that have made them. But we also have to bear in mind
40 the consequences of this heroin having come on to the market and its effect on the whole fabric of our society which, in our view, is a thought too terrible to contemplate.

45 In the circumstances, will you stand up, please. Dowse, we are sentencing you to 13½ years' imprisonment, following the conclusions of the Attorney General, on count 1 and count 3. Heys, we are sentencing you to 12½ years' imprisonment on count 2, and one month's imprisonment, concurrent, on count 4. We order the forfeiture and destruction of the drugs.

Authorities.

Campbell, Molloy, MacKenzie -v- AG (1995) JLR 316 CofA.

AG -v- Le Tarouilly (2nd December, 1996) Jersey Unreported.

Fogg -v- AG (1991) JLR 31 CofA.

AG -v- Chadwick (30th October, 1995) Jersey Unreported.

Archbold (1997 Ed'n) para. 26-58.