

ROYAL COURT
(Samedi Division)

1st May, 1997

84.

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles, Bonn, Le Ruez, Vibert, Rumfitt,
Potter, Jones and Quérée

The Attorney General

- v -

Paul Anthony Breese

Sentencing (following a 'Newton' hearing) by the Superior Number of the Royal Court to which the accused was remanded by the Inferior Number on 22nd November, 1996, on a 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 (heroin).

[On 22nd November, 1996, the co-accused, Robert John Patrick, pleaded not guilty to the same charge and was acquitted by the Inferior Number, *en police correctionnelle*, on 20th March, 1997].

Age: 33.

Details of Offence:

Breese purchased Heroin in Southampton and posted the drugs to an address in Jersey. On its arrival he intended to seize the package from the postman. 22.92g of Heroin was found in the parcel, initially he did not cooperate and was a hostile witness.

Details of Mitigation:

Guilty plea
Heroin addiction
Married with young daughter
Due to give evidence
Had been assaulted in prison, held in segregation
Co-operation with Police.

Previous Convictions:

Drugs: possession of Cannabis (1989) and (1995) eight counts of assault from 1982 - 1995 (including one grave and criminal) resisting Police 1984 and 1987.

Conclusions: 7 years' imprisonment.

Sentence and Observations of the Court: 4½ years' imprisonment.

N.M.C. Santos Costa, Esq., Crown Advocate.
Advocate J.D. Melia for the Accused.

JUDGMENT
(Decision on 'Newton' hearing)

THE DEPUTY BAILIFF: We heard the facts - or some of the facts - in this case at the trial of the co-accused of Breese, a man called Robert John Patrick, who pleaded not guilty to a charge of being knowingly concerned in the importation of diamorphine (heroin) into the Island.

The trial was strenuously fought and Patrick was eventually acquitted of the charges against him because, on the evidence, the Jurats were not satisfied beyond a reasonable doubt that he had committed the offence. It was the evidence of Breese that eventually led to Patrick's acquittal.

Breese had left Jersey for Southampton Airport on 2nd June, 1996 - he was, at the time, a heroin addict - stopping only to take some heroin at Southampton Airport that he had, according to his evidence today, secreted in the toilet there on a previous trip. He purchased a quantity of heroin from a dealer and having taken some of it both at the dealer's house and at Patrick's house where he was staying, he packed the rest of it in an already assembled cardboard box hidden amongst some clothing that he had purchased during the day at an Oxfam shop.

The address to which the package was sent in Jersey was an address with which Breese had no connection whatsoever, although the name of the occupier and the address itself were real. The sender's name and address on the package were partly fiction in that the street and district were real but the number of the house was not.

There was a fingerprint of Patrick's on a disposable glove with which the heroin had been packed. Breese gave an explanation which might have been true and which it was not possible to contradict. He told the Court on oath that when he had returned with Patrick to Patrick's house, he had found a pack of disposable gloves in the side pocket of Patrick's car and had removed them surreptitiously, using them to pack the heroin whilst in the toilet at the house. All of this was unbeknown to Patrick. The packed heroin was already, according to Breese, hidden in the second-hand clothing in the package at the time when he asked Patrick to help him to assemble the box. Patrick did not give evidence and it must be recalled that costs in his favour were refused.

Today, we have held a 'Newton' hearing because of the decision of the Court of Appeal in the case of Gregory -v- AG (15th January, 1997) Jersey Unreported CofA. It is the first post-Gregory 'Newton' hearing but we do not suppose that it will be the last. The question which is before the Court is whether - as Breese contends - the importation was for his personal use or was intended for onward supply. We need to read from that Judgment and I shall refer particularly to two passages in it, although, of course, we have considered the whole Judgment of the

Court of Appeal which is binding upon us. The first passage reads as follows:

5 *"In terms of offence to the common good, importation of*
drugs for supply to others is clearly more serious than
importation for the importer's own use. This is true even
when allowance is made for the possibility that drugs
imported for personal use may subsequently find their way
10 *into the hands of others. Nor is what we have said*
equivalent to saying that importation for the importer's
own use is of no social or criminal significance. As has
repeatedly been pointed out by the Courts an increase in
the volume in dangerous drugs circulating in a country is
15 *itself an evil. Nevertheless, the two situations of*
importation for commercial use and importation for
personal use do stand on different levels from the point
of view of the vice being introduced. It seems unjust and
inexplicable that two acts so different in their results
20 *should be visited with the same penalty".*

The second passage to which we would like to refer is at p.6 of the Judgment:

25 *"It is clear from the passage which we have cited from the*
judgment in R. -v- Dolgin that the quantity of the drug
imported is a critical consideration. If, in all the
circumstances of the case, it is a relatively small amount
that may show that the intention of the defendant was to
30 *put it to his own personal use. Once the amount goes*
beyond a relatively small amount as it increases so it
becomes increasingly suggestive of an intent to put the
drugs to commercial use and it becomes increasingly
difficult to regard the defendant's version as in any way
35 *plausible. This evidence derived from the quantity of the*
drug is objective evidence not in any way dependent on the
defendant's own account of what he intended".

40 At this 'Newton' hearing we must recall that the statement
that Breese apparently voluntarily gave to the police on the day
of his arrest and which might have implicated Patrick differed
drastically from the evidence that he gave on oath in Court when
called to give evidence by the Crown. That of course did not
affect Patrick, it merely cast a shadow over Breese's reliability
45 as a witness. Although he stated that when he gave his evidence
to the police he was already suffering withdrawal symptoms and
although he saw a doctor from time to time throughout the day, he
was clearly in a fairly parlous state by nightfall.

50 We heard from D.C. de la Haye, a very experienced drug squad
officer. The whole of this expedition by Breese was clearly
closely monitored by police and customs and it came as no surprise

to discover that the parcel was intercepted at Postal Headquarters.

5 We heard that heroin is, as everybody knows, highly
addictive. Breese had, according to his evidence, purchased some
28 grams for £940 but the amount recovered was less - 22.92 grams.
That commercial quantity would have sold in Jersey for £6,876 on
the streets. The purity of the heroin was 54% as opposed to the
10 national average of 45%. D.C. de la Haye, as we say a very
experienced officer, did not consider that it was for personal
use, although he admitted that more heroin could be used by
smoking it from tin-foil - "chasing the dragon" - rather than by
injection. There was no doubt that Breese was an unusual addict
15 in that none of the paraphernalia usually associated with untidy
addicts was found at the search of his home.

20 Breese told us in Court today that he had started his habit
whilst travelling in India with his wife some years ago. He had
thought at the time that he was smoking cannabis but he was in
fact smoking heroin and he became addicted. He was gainfully
employed in Jersey but when the couple returned here he needed to
feed his habit. At one time they had £10,000 in their bank, but
now there was nothing left. He was also at one time spending £300
to £400 per week on his addiction. His dosage had increased and
25 he had sought medical and psychiatric help.

30 Of the 28 grams that he had bought he had smoked about five
of these while staying in England with Patrick. He had bought the
heroin as a regular supply and he said that it would save him from
going out to buy it on the streets. He told us - and there was no
evidence to controvert it - that he had never sold heroin before.
He told us that he had borrowed £1,200 from a life-long friend and
he gave us his name, Mr. Wayne Hogan, and he had used it to pay
for his air ticket and for the purchase of the heroin. He
35 admitted in Court that his scheme for posting the parcel to
Grassett Park in Jersey was stupid.

40 The dealer in Southampton, he told us today, was an
acquaintance whom he had met in India and who had given him his
telephone number and address.

45 Mrs. Breese also gave evidence. She said that she had not
known of Breese's drug abuse in India and what had been a
wonderful marriage and relationship had become "very stressful".
It was a godsend that Breese had been arrested as he was now free
of drugs. One small matter that surprised us was that Mrs. Breese
was at work during the day and her post was delivered to their
home at between ten and eleven o'clock in the morning.

50 At very short notice Mr. Hogan came to Court and said that he
had in fact lent Breese £1,500, not £1,200 as we were told and it
was the largest sum that he lent to Breese. He had lent him money

in the past and he thought that it was, perhaps, to furnish a new flat. He did not know when he would be repaid. We can only say that we have no doubt on what we saw that Mr. Hogan was genuine.

5 Although there might be much to say in mitigation in this case, the Court is not able to accept that the explanation put forward by Breese is plausible. Here is a man who borrows a substantial sum from a friend; who organises his ticket and transport and accommodation whilst in Southampton; and whilst
10 there he purchases a commercial amount of heroin which on the Jersey market would have sold for over seven times its purchase price. Again, we must refer to what the Court of Appeal said:

15 *"This evidence, derived from the quantity of the drug, is objective evidence not in any way dependent on the defendant's own account of what he intended".*

20 In that context let us for a moment reflect that the amount imported could have made 230 score bags and each score bag contains between two and three chasers, so that is up to 700 chasers. That, for a normal addict, is some nine months' supply and that, in the context of the Court of Appeal Judgment, gives us some indication of the quantity and, in our view, takes it way
25 beyond a relatively small amount and, because of that amount, we are able to find that there was an intention to sell it on.

JUDGMENT
(Sentencing)

30 We now turn to sentencing. Both counsel agree that following the guidelines of the Court of Appeal in Campbell, Molloy and MacKenzie -v- AG (1995) JLR 136 CofA, the starting point in this case would normally be nine years' imprisonment, but there is
35 mitigation which has nothing to do, we hasten to add, with the sympathy which we feel for Breese's family. If nothing else today this case has illustrated the totally vicious affects of heroin on those who are innocent. But there are mitigating factors and they are very strong in our view. Breese is to give evidence regarding
40 an assault at the prison. We dealt with this in AG -v- Akehurst (29th July, 1996) Jersey Unreported by citing with approval the words of Lord Lane CJ in R. -v- Sivan & Ors [1988] 10 Cr.App.R.(S) 282 at 283 where the Court said this:

45 *"If the object of the procedure is to benefit the public by encouraging the defendant to give information, it matters not whether the information relates to the offence under investigation or some other entirely different criminal activity".*

50 Secondly, we have looked at the case of AG -v- Newcombe and Wall (25th October, 1996) Jersey Unreported and because of the

5 assault at the prison and the fact that he is going to give evidence Breese lives in segregation with Wall in a regime which allows no contact with the prison population and where work and organised activity at the present time are very difficult. Coupled with that he has expressed remorse which appears to us to be genuine and is apparently clean of heroin at the present time.

10 The learned Crown Advocate asked for seven years; that we would hasten to add in the normal circumstances of the facts of this case would be right. But we feel that there is mitigation which makes this case exceptional and puts it within the bracket of Akehurst and the case of Wall.

15 Stand up, please, Breese. We are going to sentence you to 4 1/2 years' imprisonment and we are going to take into account the time that you have already spent in custody. We further order the forfeiture and destruction of the drugs.

Authorities
(on 'Newton' hearing)

Gregory -v- AG (15th January, 1997) Jersey Unreported CofA.

(Sentencing)

AG -v- Fogg (1991) JLR 206.

Clarkin & Pockett -v- AG (1991) JLR 213 CofA.

Dolgin (1988) 10 Cr.App.R.(S) 447.

AG -v- Campbell (15th September, 1994) Jersey Unreported.

Campbell, Molloy and MacKenzie -v- AG (1995) JLR 136 CofA

AG -v- Bartlett and Mawdsley (20th March, 1996) Jersey Unreported.

AG -v- Akehurst (29th July, 1996) Jersey Unreported.

AG -v- Gregory (1st October, 1996) Jersey Unreported.

AG -v- Newcombe and Wall (25th October, 1996) Jersey Unreported.

Gregory -v- AG (15th January, 1997) Jersey Unreported.

AG -v- Patrick (28th February, 1997) Jersey Unreported.