

ROYAL COURT  
(Samedi Division)

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13th June, 1995

Before: The Bailiff, and  
Jurats Blampied, Bonn, Orchard,  
Gruchy, Vibert, and Rumfitt.

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The Attorney General

- v -

Nicolette Tegan Melville  
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On 13th January, 1995, the accused entered guilty pleas 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: M.D.M.A.; and  
Count 2: L.S.D.;

and not guilty pleas to:

3 counts of supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978:

Count 3: M.D.M.A.;  
Count 4: L.S.D.; and  
Count 5: M.D.M.A.

1 count of selling a poison, whilst not an authorized seller, contrary to Article 16(1)(a) of the Pharmacy, Poisons, and Medicine (Jersey) Law, 1952 (Count 6: Ephedrine):

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 7: L.S.D.; and  
Count 8: M.D.M.A.;

4 counts of possessing a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:

Count 9: L.S.D.;  
Count 10: M.D.M.A.;  
Count 11: Amphetamine Sulphate; and  
Count 12: Cannabis Resin.

The accused was remanded on bail to be tried on Counts 3-12, and thereafter to receive sentence on Counts 1 and 2.

On 10th March, 1995, (*See Jersey Unreported Judgment of that date*), the Court granted the Accused's application to change her guilty pleas to not guilty pleas on Counts 1 and 2; and not guilty pleas to guilty pleas on Counts 6 and 12. The accused was remanded in custody for trial before the Inferior Number on 4th April, 1995.

On 4th April, 1995, the Accused informed the Court that she wished to plead to all counts; and was remanded in custody for sentencing before the Superior Number on 2nd May, 1995.

On 2nd May, 1995, the Accused made a written submission in mitigation to the effect that she was not guilty of the offences with which she was charged, but was pleading guilty "for practical and pragmatic reasons". The Court adjourned the Sitting to 13th-14th June, 1995, for a 'Newton' Hearing.

On 1st June, 1995, (*See Jersey Unreported Judgment of that date*) on the representation of the Attorney General, the Court directed that, at the 'Newton' hearing on 13th-14th June, 1995, the *onus probandi* would be on the Accused to satisfy the Court that her version of events is true.

On 13th June, 1995, the Court, after directing that the Accused must withdraw her written submission that she was not guilty of the offences with which she was charged but was pleading guilty "for practical and pragmatic reasons", and must instead enter an unambiguous plea, ruled that it was unable to accept the pleas then entered by the Accused and remanded her in custody to stand trial before the Inferior Number on 26th and 27th July, 1995, on not guilty pleas to all counts in the indictment.

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A.J. Olsen, Esq., Crown Advocate.  
Advocate A.D. Hoy for the Accused.

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JUDGMENT

THE BAILLIFF: Mr. Hoy, before the Court proceeds I think that it is desirable that I recapitulate briefly what has happened so far.

5 The matter came before the Superior Number on 2nd May, 1995. On that day, Crown Advocate Olsen outlined the facts and moved conclusions. You, Mr. Hoy, began your speech in mitigation and you passed up a letter written by Melville.

10 The Court then decided that the mitigation appeared to be in substantial conflict with the factual account which the Court had been given by the Crown and the Court adjourned and ordered what it termed a 'Newton' hearing. Subsequently the Crown made a representation as to the nature of the hearing which should take place and the Inferior Number determined that on the particular facts of this case what was required was what is now called a reverse 'Newton' hearing and that it was for the defence to decide  
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whether to call evidence in support of the mitigating circumstances outlined by counsel.

5 That is the procedural history and the matter comes back before the Superior Number for sentencing. But as we are differently constituted we shall have to begin the sentencing process at the beginning.

10 However, before we begin - and this is the real purpose of this introduction and I hope that the defendant, Mrs. Melville, will listen very carefully to what I am going to say - the Court needs to be absolutely clear that the accused is unequivocally pleading guilty to the counts on the indictment. She has entered a plea of guilty, but in the letter passed to the Court on 2nd  
15 May, she states:

20 *"I would like to ask the Court to accept that I am pleading guilty for practical and pragmatic reasons. I am aware that the evidence is against me. This is the reason for my guilty plea although I am not responsible for the crimes charged".*

25 That statement gives rise, upon mature reflection by the Court, to an ambiguity. The defence is perfectly entitled to say "I committed the offences but the primary responsibility was that of my husband". That is a matter of mitigation and whether the Court accepts the mitigation will depend upon what is said by counsel and upon what evidence, if any, is called in support of such mitigation.  
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35 What the defence cannot be permitted to say in terms is "I am pleading guilty, but I am only doing so for practical or pragmatic reasons. I am not really responsible for the crimes charged". That is ambiguous. It throws doubt upon whether Melville is really admitting her guilt.

40 Mr. Hoy, either the letter containing those sentences must be withdrawn and the defence proceeds in whatever way it wishes to outline the mitigating factors which apply in this case; or, if that remains the standpoint of the defendant then the Court will enter a not guilty plea on her behalf and the matter will have to proceed after all to trial.

45 The Court will retire for however long you need, Mr. Hoy, to take instructions from your client and when you let us know that you are ready to proceed, we should like to know how the defence is going to respond.

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Mr. Olsen, it appears to me - although I shall obviously need to consult with the Court that - having heard Mr. Hoy, the Court should enter pleas of not guilty to all the counts on the indictment and that the whole matter should proceed to trial.

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*[The Bailiff consulted with the Court and continued].*

Mrs. Melville, in the light of that which has been said by your counsel the Court considers that there is an unacceptable ambiguity in the guilty plea tendered on your behalf and the Court is going to send you to trial before the Inferior Number on all the counts on the indictment. The Inferior Number will then hear the evidence for the prosecution, and the evidence for the defence, and will determine whether or not you are guilty of the charges laid against you. In the meantime you will be remanded in custody.

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No Authorities.