

ROYAL COURT
(Samedi Division)

140.

20th July, 1995.

Before: The Deputy Bailiff and Jurats
Bonn, Orchard, Gruchy, Vibert,
Rumfitt, Potter, and de Veulle.

The Attorney General.

- v -

Duncan Carl Raffray.

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded on 21st June, 1995, by the Inferior Number on 21st June, 1995, following a not guilty plea and conviction on:

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

AGE:

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PLEA:

Not Guilty

DETAILS OF OFFENCE:

A single 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 & Excise (General Provisions) (Jersey) Law, 1972, as amended. The quantity of heroin weighed 55.4 grams and had a street value of between £11,080 and £16,620, depending upon whether the heroin was to be retained in gram quantities or in score bags. Postal importation.

The conviction followed a two-day trial.

DETAILS MITIGATION:

Nothing apart from previous good character.

PREVIOUS CONVICTIONS:

None.

CONCLUSIONS:

10 years' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

Conclusions granted.

The Defendant had lied virtually from the moment of his apprehension right the way through the trial and still continues to protest his innocence. This was a commercial quantity of heroin sufficient to make up between 1,100 and 1,650 individual doses. This was a "filthy trade" and the Court had no hesitation in granting the conclusions for which the Crown had moved.

A.J. Olsen, Esq., Crown Advocate.
Advocate Mrs. S.A. Pearmain for the Applicant.

JUDGMENT

THE DEPUTY BAILIFF: The offence for which Raffray has been convicted, involves a quantity of heroin. 55.4 grams with a street value, we are told, of between £11,080 and £16,620.

5 I set out the facts briefly. The heroin was intercepted by a customs officer at Postal Headquarters. It was in a packet addressed to Mr. Lopez, Flat 10, Roseville House, Roseville Street, St. Helier. When the packet was opened, it was found to contain the heroin rolled up in a clear bag, tied at each end, with dark shoe laces, and wrapped in pink paper. This bag was
10 inside another clear bag. At Postal Headquarters an innocuous substance was made to resemble the heroin and the whole packet was carefully reconstructed.

15 The address to which the packet was to be delivered was that of Raffray. A delivery was made at about 9.20 a.m. on the 12th January, 1995. The postman was instructed to put the package, only partly through the letter box. Almost instantly after delivery the packet was pulled through the letter box by Raffray.

20 Raffray claimed in Court that he was curious to know what the packet contained. But in his curiosity he made no attempt to open the packet with any subtlety. It was quite simply ripped open.

25 The flat was under observation from several customs officers. Raffray was seen to be looking out of the window in such a way that the observers had to be warned to keep a low profile. He did this some five times before the postman made his delivery and some sixteen times up to a quarter past ten when customs officers
30 executing their search warrant, broke into his flat.

The two black shoe laces were found in a bin liner in Raffray's kitchen and eventually a further search revealed the empty letter packet in an unlocked cupboard on the landing outside

the flat. This was inside a piece of rolled raffia matting. Further down inside the large cardboard box containing the raffia matting were the inner contents of the packet.

5 Raffray lied from the moment the customs officers detained him. We have to say that some of his lies were blatantly absurd. He told the Court that he had placed the packet on the low wall outside the flat. Neither of the two postmen who regularly
10 deliver to the flat had ever known this to happen before. He could not explain how the contents, divided as they were, had found themselves in the cupboard. He said they must have been placed there by Mr. and Mrs. Lopez.

15 Raffray described how this mysterious couple had called to see him about lunchtime the previous day. He described them to us. He made it very clear that, up to that time, they were complete strangers. He was able to pin-point the time at between 1.30 and 2 o'clock in the afternoon on 11th January. They had
20 apparently, but in our view totally implausibly, lived in the flat at some time. It was unfortunate for Raffray that the caretaker of 10 Roseville Street, Mrs. Rita Reynold, had been approached by him, as had a postman on delivery in the area, requesting information, with some real anxiety, about this packet in the name of Lopez hours before the Lopez's name first came to his
25 attention. He told Mrs. Reynold that he had been anxiously waiting for this package for some weeks. On 12th January, and as Mrs. Pearmain has reminded us, quite voluntarily, Raffray provided a urine sample to the investigating officers. On analysis this contained traces of cannabinoids and two separate opiates. The
30 Court below, that is the Inferior Number, heard that the presence of cannabinoids could only be explained by the ingestion of cannabis.

35 While Raffray admitted taking cannabis some six or seven years previously when in Hawali he denied having done so since. One of the opiates was consistent with a pharmaceutical preparation which had been lawfully prescribed to Raffray for his very serious back complaint but the other was not; it was morphine. The Court heard how the States Analyst had told how
40 heroin/diamorphine breaks down quickly in the body into morphine. The explanation that Raffray gave in the Court below as to the presence of cannabis was, we consider, as implausible as the story about Mr. and Mrs. Lopez. He said that some cannabis must have been sprinkled onto food which he had eaten in large quantities at
45 a party on the Monday night prior to his arrest on the Thursday. He could not remember where the party had taken place or the name of the host. The explanation for the presence of morphine in the urine sample was even more bizarre. It was, he said, explained by the fact that he had been taking a proprietary medicine, Dr.
50 Collas Brown's mixture, which contained a small quantity of morphine in order to counteract several severe bouts of diarrhoea from which he claims to have been suffering. No trace of any proprietary medicine was found in his flat. The explanation was, as far as we are concerned, somewhat at odds with Raffray's own

claim that he had eaten a great deal at a party a couple of nights prior to his arrest and in addition, on the eve of his arrest, had been to two different fast food outlets in St. Helier and consumed, at various times, chips, cannelloni, part of a kebab, and soft drinks.

We have to add something before we turn to our conclusions. The 55.4 grams of heroin, we are now told, would have been sufficient to make not, as previously told to us by Detective Constable De La Haye, 550 individual doses but 550 score bags, each score bag containing 2 or 3 chasers or individual pieces of heroin.

The amount imported by Raffray was enough to make 1,100 to 1,650 individual doses of heroin. The harm that might have been done to young people, in particular, and to the fabric of society as a result of the filthy trade in which Raffray was involved is incalculable.

Raffray is Jersey born, and is 35 years old. He has, to his credit, no previous convictions and his previous good character is perhaps a mitigating factor. There is however no other relevant mitigation. He has consistently pleaded not guilty and the only assistance that he has given to the authorities was when he gave a urine sample. We do not believe that Raffray was merely a "post box". Post box recipients of drugs, in our view, do not rip open the contents of packages when they are delivered to them. We have no doubt that our duty is as set out in Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported, CoFA at page 7 where the Court said this:

"The courts cannot by themselves provide a solution to the problem but they can play their part by adopting a sentencing policy which marks the gravity of the crime. 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."

We must also remember that a seriously aggravating factor is the quantity and value of the drug. As we were told by Crown Advocate Olsen, this is the second largest heroin case, in terms of quantity, yet to come before this Court.

The Court of Appeal in Campbell reminded us in this way of the dangers of heroin. Referring to an increase in heroin abuse since 1991, the Court said this:

"The Attorney General submitted that this increase, particularly in relation to heroin abuse created the risk of mounting acquisitive crime. The Attorney General invited us to consider how such acquisitive crime,

particularly burglaries and muggings, might adversely affect the quality of life in the Island."

5 This is a very serious case and although Mrs. Pearmain said that there was no proof of trafficking we must again refer to Campbell where the Court of Appeal said this:

10 *"We accordingly state that it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years. We have employed the term "trafficking" deliberately. In the past, some distinctions may have been drawn between offences involving the importation of Class A drugs and offences involving their supply or their possession with intent to supply. In our judgment there is no justification for any such distinction. The guidelines which we have set out above apply to any offence involving the trafficking of Class A drugs on a commercial basis."*

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20 Strangely, Raffray continues to maintain his innocence. We can find nothing in his case which gives us the slightest doubt that he is a man of wickedness. Certainly a couple were seen outside the flat by Customs Officers just prior to the raid's being carried out. This might have been an innocent couple. It was unfortunate, because of a defect in the radio transmitters
25 supplied to the Customs Officers, or rather, because of the position in which they were placed, as a result of the Officers having to keep back due to Raffray's looking out of the flat window, that this couple were not detained, if only to eliminate them from enquiries. But, of one thing we are certain: they were
30 not Mr. and Mrs. Lopez; we are convinced that this couple, Mr. and Mrs. Lopez, are nothing more than a figment of Raffray's fertile imagination.

35 Despite everything that Mrs. Pearmain has said we have no hesitation in endorsing the conclusions urged upon us by the Crown Advocate and you are therefore sentenced to 10 years imprisonment and we order the forfeiture of the drugs.

Authorities.

Campbell, Molloy, MacKenzie-v-A.G. (4th April, 1995) Jersey
Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp. 44.

Thomas: Current Sentencing Practice:

Release 23: 1-vi-92 : pp.110231-2.
: pp.110217-8.

Release 27: FEB'94 : pp.110216-110216/1,2.

Release 25: 1-iii-93: pp.110219-20.

Release 29: FEB'95 : pp.110220/1,2.