

ROYAL COURT
(Samedi Division) 50

14th March, 1995

Before: The Deputy Bailiff, and
Jurats Blampied and Rumfitt.

The Attorney General

- v -

Robert Campbell

Judgment, announcing guilty finding, following a not guilty plea to:

1 count of possessing a controlled drug (cannabis resin) with intent to supply it to another,
contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

W.J. Bailhache, Esq., Crown Advocate.
Advocate Mrs. S.A. Pearmain for the Accused.

JUDGMENT

THE DEPUTY BAILIFF: Campbell is charged with possessing a controlled drug, namely cannabis resin with intent to supply. The charge sheet reads as follows:

5

"Statement of Offence

Possessing a controlled drug with intent to supply to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

10

Particulars of Offence

15

Robert Campbell, alias Robert Gilbertson, on 19th June, 1994, in the Parish of St. Helier had in his possession with intent to supply to another, a controlled drug specified in Part II of the second schedule of the said Law".

20

It is necessary to supply a little of the background information to that charge.

At about 6.10 p.m. on the evening of Sunday, 19th June, Police Constable Gough and Police Constable Wheeler saw Morley outside "La Cave des Vins" public house in Sand Street. They had
5 watched Morley speak to occupants of a brown Ford Sierra car which was stationary outside the entrance to the car park. Morley apparently ran across the road and got into the car and again, apparently, he was carrying nothing at the time. The vehicle was
10 driven to the second floor and parked. There were some people in it, apart from Morley, and a short while later those people were joined by Swinburn.

Subsequently Swinburn and Morley left the vehicle and made their way down the stairs which exits on to the Route des Mielles; the vehicle left the car park. Morley and Swinburn walked into
15 Anley Street from the Route des Mielles and apparently Morley was carrying a holdall with the word 'Head' written on it. The holdall did not appear to be empty. Morley and Swinburn walked into Seale Street via Sand Street to No. 17 Seale Street which was
20 Morley's home address. They both entered the premises.

At approximately 6.40 p.m. that evening Swinburn was seen to leave 17 Seale Street and to walk towards Seaton Place. He was carrying a carrier bag in his hand. He turned left into Sand
25 Street and continued to the "La Cave des Vins". About 5 minutes later Morley was seen to leave his home address and he followed the same route as Swinburn. He was also carrying a carrier bag. He was stopped in Sand Street by two police officers and informed that he was being detained. The carrier bag which he was
30 carrying had within it a large quantity of cannabis resin. Morley was arrested on suspicion of being in possession of the cannabis and cautioned but he made no reply; he had a small piece of cannabis in cling film in the pocket of his jeans. He was taken back to his home address and a warrant was subsequently
35 executed. Various items were found in the flat all connected with cannabis.

We do not need to go any further into that part of the background except to say that both Morley and Swinburn later made
40 statements to the police.

The facts that we are dealing with thereafter are clear. Campbell is 40 and he has lived in Jersey all his life. He has smoked cannabis before and he has two convictions for possessing
45 cannabis. These facts were put to him by his counsel when he gave evidence before us. In 1978, he was fined £150 for being in possession of cannabis resin and in 1986, again for the same offence, he was fined £300. He therefore has a very clear understanding of the consequences of being in possession of this
50 drug. He told us that he had regularly smoked cannabis before his arrest, but again he told us he had never dealt in cannabis. He has known Morley, that is John Morley, for 20 years and Morley

said in a police interview, that we looked at, that Campbell was a trusted friend. Campbell in his statement said that Morley was a friend. He has also known William, or Billy Swinburn, for 10 years. On Sunday 19th June he had worked on a boat, "Holy Smoke", owned by Billy Swinburn. It had apparently been laid up since January. Campbell is a painter/decorator. When he had finished work he drove in Swinburn's car to Sand Street car park and he told us that a few days earlier John Morley had asked him to look after some drugs for him. He had agreed. He knew that the drug would be cannabis. He said he would give the cannabis back to Morley in a few days time. He said that he would not give it to anyone other than John Morley, and of course as we have said, he denied that he would sell it himself.

Two things arise here. Campbell told us that he was well aware of the street value of cannabis, 1 ounce cost £160; he knew that Morley was talking about a commercial amount; and he knew - because he told us - that John Morley would deal in this particular cannabis. During the time that he was having his drink at the Cave des Vins he sat at a table with Swinburn. The two men were drinking and chatting. Suddenly, he told us, and without comment Swinburn left his unfinished drink on the table and went outside. Campbell waited for some twenty minutes and he knew that Morley's home address was only a short walk away. He bought himself another drink. Swinburn returned. At that time he obviously had the packet of cannabis bars with him. The total amount of cannabis resin, 50 bars of it, weighed 3,628 grams. There was, according to Sergeant Du Val, sufficient for 1,080 individual deals and a value of some £21,600 in the bag. The Court took the opportunity to feel the weight of the bag and we must here note that it was of considerable weight and of considerable bulk.

Campbell told us that he knew that what he was doing was against the law; he told us that he would have got something for it; his actions were not entirely altruistic. He made no enquiries as to where in a time of what he called "cannabis drought", this large amount of cannabis had been obtained. Eventually, he said, he would have spoken to John Morley. He was outside the Cave des Vins walking along the street when Swinburn apparently put the cannabis in his work bag. Mr. Bailhache read two statements made by Swinburn to the police. The first part of his statement reads like this and I quote from the foot of page 2:

"Then, we got into his flat. And, he was telling me about what sort of day he'd had. He'd been drinking all afternoon and he was too pissed to go back down to the Cave. Then, he asked me if Bob was in the Cave which I said he was and he asked me if I could drop a bag down for him and give it to Bob. I knew that there was dope in it, but not exactly how much. He said that Bob would sort us out, sort me out. I left John's almost straight

away, walked round to the Cave and finished my pint and then walked outside. At that point I was with Bob and we'd just walked 10 yards and at which point I stopped and said if it's for him how come I'm carrying it? At which point he said he'd put it in his bag. He put it in his bag and carried on walking, he was going home and I was going to mine, then we were arrested."

Later on there is this part of the question and answer at page 5:

"Q. Did you expect to get anything for your trouble?

A. Yeah, he said Bob'd sort me out. I was expecting a couple of ozzers.

Q. By that you mean ounces, yes?

A. A couple of ounces, yeah.

Q. So, Bob was expecting to get the gear from John?

A. Yeah.

Q. Had he discussed it with you during the day?

A. So when you say was he expecting to get the gear, I don't think he was. When I went into the Cave and dropped the bag next to him I said 'it's all sweet'. I said I'd been up to see John and he'd given me this here.

Q. So, Bob wasn't worried about taking the cannabis?

A. No, he didn't seem to be.

Q. Was he pleased to see it?

A. Yes.

Now, Campbell denied that he would have had any right to give any of the cannabis to Swinburn. And, he also denied when that statement was read to him that he had been pleased, to use Swinburn's words, to see the cannabis.

He complained to us that it was less than one minute in his possession, but that is irrelevant. He lives in Grosvenor Street and, had he not been arrested, was clearly on his way somewhere, possibly as Swinburn intimated, to his house.

Campbell made two interviews under caution. The second is perhaps more expansive than the first. In the second he confirmed what he said to us, and I am reading now from the second interview at page 2:

"Q. When did John ask you to look after the drugs?

A. A couple of days before I was arrested.

Q. What exactly did he say?

A. Just something like 'would you look after something for me', and I had a good idea that it would be cannabis.

5 So, here we have a man who knew that he was going to receive
cannabis resin, agreed to accept it from someone whom he had known
for 20 years who referred to him as a trusted friend. He
anticipated some vague recompense but he had not yet ascertained
what it would be. He knew that Morley was a dealer in this
present amount of cannabis and he knew that he was going to
receive a commercial amount of the drug. He told us that he had
not noticed Swinburn return to the Cave des Vins with the package
10 in his hands but it would have been, in our view, extremely
difficult to ignore the size and weight of the parcel. As we
have said the Court handled it, it was remarkably heavy.

15 The accused is charged with only one offence, that is
possessing a controlled drug with intent to supply it to another.
The learned Jurats have had no difficulty in deciding on the facts
that Campbell was in possession of cannabis. The learned Jurats
have found as a matter of fact that the contention of Campbell
that he did not intend to supply the cannabis to others might be
true and they are not satisfied that the prosecution has proved
20 beyond reasonable doubt that he intended to supply that cannabis
to others unknown. Mr. Bailhache gave details of the quantity of
the drug, and the Jurats accept that £21,600 worth of drugs with a
potential of 1,080 separate deals, was something other than for
personal use.

25 Campbell told us that he was holding the goods for Morley and
he would return the cannabis to him. The learned Jurats are
prepared to accept Campbell's explanation.

30 We note that in The Misuse of Drugs (Jersey) Law, 1978,
supplying includes distributing so that giving all the drugs to
one person rather than giving some of the drugs to several people
would be supplying. Furthermore Article 13 states:

35 ***"That for the purposes of the law anything which a person
has in his possession shall be taken to include anything
subject to his control which is in the custody of
another."***

40 The Jurats have therefore accepted my direction that the
drugs in Campbell's possession were also in Morley's possession.
If Morley had asked for the drugs back they would, on the facts,
45 have been returned to him.

50 Article 5 and 6 of the law define the offence of unlawfully
having a controlled drug in ones possession and supplying it to
another. Clearly there are defences open but Campbell on the
facts, his defence does not, and cannot, fall within any of the
statutory defences.

We examined over the course of the hearing a number of interesting cases. The leading English case is now that of the R -v- Maginnis (1987) 85 Cr.App.R.127 H.L. In that case the question asked by the House of Lords, as amended by them, was this:

"Whether a person in unlawful possession of a controlled drug which has been deposited with him for safe keeping has the intent to supply that drug to another if his intention is to return the drug to the person who deposited it with him."

The Jurats have been advised that the House of Lords decision is so persuasive as to be effectively binding upon this Court. We cannot, in those circumstances, be concerned with the dissenting judgment of Lord Goff, nor the Court of Appeal's unanimous judgment in the Court below, nor the decision of the Supreme Court in Australia in the case of R -v- Carey (1990) 20 NSWLR 292, nor the large amount of critical analysis that the case of Maginnis has sparked off in England.

We cannot see that there is any particular local factor prevailing in Jersey that requires us to examine all the interesting arguments and counter-arguments that were put before us. In any event we have to say this; the Court found the arguments of Lord Keith in the judgment in the House of Lords particularly attractive and I will read now from page 133 of that judgment:

"In my opinion, there is a clear distinction between the decision in Delgado and that in Dempsey. In Delgado a custodier was found to have the necessary intent to supply because his intention was to hand back controlled drugs to the persons who had deposited them with him so as to enable those persons to apply the drugs to their own purposes, and thus put them back into circulation. In Dempsey there was a mere placing in temporary custody, and no intention of enabling the custodier to use the drugs for her own purposes. Maureen did not want the drugs for any purpose of her own. One who deposits controlled drugs of which he is in unlawful possession with a temporary custodier has no legal right to require the drugs to be handed back to him. Indeed, it is the duty of the custodier not to hand them back but to destroy them or to deliver them to a police officer so that they may be destroyed. The custodier in choosing to return the drugs to the depositor does something which he is not only not obliged to do, but which he has a duty not to do. Any analogy with bailment is false in a situation where the

depositor has no right to ownership which the law would recognise and certainly none to immediate possession.

5 It is worth noting that, in a decision which was not cited
in the Court of Appeal, the High Court of Justiciary in
Scotland accepted a construction of section 5(3) which is
in line with Delgado of which it expressed approval.
That decision is *Donnelly v. H.M. Advocate*, 1985 S.L.T.
10 243. The appellant had claimed that a quantity of
controlled drugs, of which he had been found in
possession, had been placed in her custody by a man called
Colin Stewart. In the course of the opinion of the court
it was said, at p.244:

15 'if the appellant intended to part with all or some of
the drugs in her possession to Colin Stewart, even for
his own use, she intended to supply Colin Stewart, and
it matters not whether his intention was to use them
20 himself or to supply others.'

Of course in this case we have the unequivocal statement by
Campbell that he knew that Morley would be dealing in these drugs.

25 The Jurats following my direction have found that Campbell
had in his possession a commercial and very significant amount of
cannabis resin. He was in unlawful possession of a controlled
drug. It had been deposited with him for safe keeping. He had
the intention to return that drug to Morley who through his agent,
30 Swinburn, had left the drug with him. Further, as we have said,
he knew that Morley would deal in the drug in question.

In the premises the learned Jurats had no difficulty
whatsoever in finding the offence proved as charged.

Authorities

Misuse of Drugs (Jersey) Law 1978.

R. -v- Delgado (1984) 78 Cr.App.Rep. 175.

R. -v- Maginnis (1986) 2 All ER 110 C.A.

R. -v- Maginnis (1987) 85 Cr.App.Rep. 127 (H.L.).

R. -v- X (1994) Crim. LR 827.

R. -v- Carey (1990) 20 NSWLR. 292.

R. -v- Taylor (1986) Crim. L.R. 680.

R. -v- Gordon (1995) Crim. L.R. 142.

R. -v- Dempsey (1986) Crim. L.R. 171

R. -v- Greenfield (1983) Crim. L.R. 397.

Archbold: paras 26-48 - 26-51 inclusive.

Fortson: "The Law on the Misuse of Drugs and Drug Trafficking Offences
(2nd Edn): pp.91-99: Proving the offence.