

ROYAL COURT
(Samedi Division) 158.

9th September, 1996

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

The Attorney General

- v -

Steven Paul Cain

Sentencing by the Superior Number of the Royal Court to which the accused was remanded by the Inferior Number on 2nd August, 1996, following a guilty plea to:

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

1 count of assault on a Customs Officer, contrary to Article 5(a) of the said Law.

Age: 30.

Details of Offence:

Defendant stopped at airport following arrival from Edinburgh. Refused to be x-rayed. Behaved aggressively whilst in detention. In due course he excreted one package but sought to hide it. He assaulted a customs officer by punching him in the eye, requiring one stitch. He eventually excreted a total of two packages containing an aggregate of 55.42 grams of heroin of 60%-65% purity, sufficient to produce up to 1,662 individual doses, depending upon the tolerance of the user. The value was £8,867 if sold at £160 per gram or £16,626 if sold in score bags at £30 per score bag. Defendant refused to say anything at the time but in the probation report stated that he was a courier.

Details of Mitigation:

No criticism of starting point of 10 years but it should not be greater. The defence also accepted the suggested discount of 2½ years. It would be wrong to increase the sentence moved for as the defendant should be given credit for not requiring the Crown to prove its case.

Previous Convictions:

Several for house breaking and assault; no previous drugs offences.

Conclusions:

Count 1 : 7½ years' imprisonment.
Count 2 : 3 months' imprisonment, consecutive.

Sentence and Observations of the Court:

Count 1 : 9 years' imprisonment.
Count 2 : 3 months' imprisonment, consecutive.

10 years' starting point correct, but one year's deduction sufficient to cover available mitigation.

The Attorney General.
Advocate S.E. Fitz for the accused.

JUDGMENT

THE DEPUTY BAILIFF: Steven Paul Cain was stopped on 1st May, 1996, by Customs Officers at Jersey Airport. He held a single ticket purchased in Edinburgh the previous day. He told Customs Officers that he would be staying in Jersey for a couple of months and that he would possibly be looking for employment.

Although nothing was found after a search of his person and luggage, the Customs Officers were suspicious and he was detained. He refused to have an X-ray taken at the General Hospital and became abusive. When he was taken to the custody suite at the Elizabeth Terminal he became aggressive, attacking the furniture, urinating in a corner of the room and spitting on the floor. If those were outward signs of an inner turmoil, they were perhaps understandable.

Later he passed in bowel movements two packages he had either concealed up his anus or swallowed. The discovery of the first package was made only after Cain had attempted to conceal it in a blanket that covered his legs. At that point, Cain struck a blow at Customs Officer Allan which cut his eye, causing it to bleed. A second punch fortunately missed. He was bundled to the floor and handcuffed.

The following afternoon in a second bowel movement he passed another package. The first package contained on analysis by the States Analyst 27.87 grams of heroin which had a purity of 60%. The second passage contained 27.55 grams of heroin which had a purity of 65%.

He was properly cautioned and reserved his plea when he appeared in the Police Court on 7th May of this year.

5 Detective Constable de la Haye has provided a statement which shows that apparently heroin sells in Jersey at between £160 and £200 per gram. It is normally purchased in score bags which contain one-tenth of a gram and those retail for approximately £30 each. But it was clear to DC de la Haye that this heroin would probably have been sold in score bags at £300 per gram, giving it a street value of £16,626 approximately. Each score bag is sufficient to provide up to three individual doses depending on the tolerance of the user. Heroin is of course highly addictive and we have recently seen in this Court depressing cases of the effects that dependency can have, not only upon those who become addicted, but upon their families. The amount of heroin in these two packages could have produced up to 1,662 individual doses. The purity of this heroin is apparently significantly higher than the national average figure of 44%.

20 In Raffray -v- A.G. (17th January, 1996) Jersey Unreported, the Court of Appeal chose to repeat the words that were used in our judgment. We said:

25 *"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".*

30 Cain has told his Probation Officer that he did not realise the sentencing policy of this Court in relation to drugs. It might be useful in this judgment for those who take notice what we mean by the words "harm to the fabric of society". Those who sell heroin hope, no doubt, that it will lead to addiction for addiction means no more nor less than a craving for more. Those who indulge in what we have called "this filthy trade", people like Cain, care little for the effect that their actions will have. But craving can easily lead to mounting acquisitive crime by which we mean muggings and break-ins. If we are to protect those immature or easily led members of our society, this Court, following the guidelines of the Court of Appeal in Campbell, Molloy & MacKenzie (4th April, 1995) Jersey Unreported CofA and in the words of that Judgment, will follow a policy whereby:

45 *"....offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking".*

50 The Crown says that Cain was acting as a courier. That of course raises questions in our minds. Who supplied him with these drugs and who, if he did swallow them, persuaded him to swallow them? We say 'persuaded' because he has told the Probation Officer that he was not involved in the drugs scene in Edinburgh

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5 to which he had returned after being released from prison on 5th
January of this year. His criminal record is not overly long and
does not include drugs offences. But who, then, were his friends
that were apparently masterminding this operation? He does not
say. What was to happen to these drugs if he had brought them
successfully into Jersey? He does not say. It was, apparently,
his aim to remain in the Island, where, having helped to
disseminate this large amount of heroin amongst the local
10 population, he would start again and create a new life for
himself, presumably with no thought whatsoever for those lives
that his actions might have wrecked on the way.

15 On the assault on the Customs Officer, we follow the case of
Hughes -v- A.G. (17th June, 1987) Jersey Unreported; (1987-88) JLR
N-19 CofA and make the assault sentence consecutive. We find the
three months asked for by the Crown for that assault wholly
appropriate.

20 Miss Fitz, who has said everything that she can say for her
client, states that while her client has not been co-operative, he
might easily have entered a plea of not guilty. That would, in
our view, have availed him nothing and would merely have led to
his losing any benefit for a plea of guilty. We are prepared to
reduce the starting point of ten years which we think is correct,
25 but only by one year and we can see no reason to assist a totally
unco-operative courier by giving him a full one-third allowance.

30 Therefore, Cain, stand up, please. On count 1, you are
sentenced to nine years' imprisonment; on count 2, you are
sentenced to three months' imprisonment consecutive. We order the
forfeiture and destruction of the drugs.

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Authorities

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

Raffray -v- A.G. (17th January, 1996) Jersey Unreported CofA.

R. -v- Hill (1983) 5 Cr.App.R.(S) 214.

Hughes -v- A.G. (17th June, 1987) Jersey Unreported; (1987-88) JLR N-19 CofA.

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