

JERSEY / JUDGMENT

Gregory & Raffray -v- A.G.

[2005] JCA 089 (06 July 2005)

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COURT OF APPEAL 6th July 2005 Before: R. C. Southwell , Esq., Q. C President; D. A. J. Vaughan, Esq., C. B. E., Q. C.; and Lord Hodge Elaine Audrey GREGORY v The Attorney General Application for leave to appeal against sentence on 14 th April, 2005, by the Superior Number of the Royal Court on 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 61(2)(b) of the Customs and Excise (Jersey) 1999 . Duncan Carl RAFFRAY v The Attorney General Application for leave to appeal against sentence on 14 th April, 2005, by the Superior Number of the Royal Court on guilty plea to: 1 Count of: Possession of a controlled drug with intent to supply contrary to Article 6 (2) of the Misuse of Drugs (Jersey) Law 1978. Advocate D. Steenson for E. A. Gregory Advocate R. Juste for D. C. Raffray C. M. M. Yates, Esq., Crown Advocate

judgment

VAUGHAN JA 1. This is the judgment of the Court on an appeal on behalf of Elaine Gregory and an application for leave to appeal on behalf of Duncan Raffray which arise out of the importation of a very significant quantity of heroin into Jersey, which took place on 17 August 2004. As a result of that importation by her husband Martin Gregory, and her subsequent involvement, Elaine Gregory was sentenced to five years' imprisonment for the offence of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of heroin and Martin Gregory to a term of six years for the same offence, both following pleas of guilty. Martin Gregory does not make an application for leave to appeal against his sentence. 2. Duncan Raffray , to whom the heroin was passed, having pleaded not guilty, was sentenced, following his conviction, to a term of ten years for the offence of being in possession of heroin with intent to supply. 3. The quantity of heroin which was imported was 235.89 grams, almost all of which was passed on to Duncan Raffray . For a quantity of heroin ranging from 100 to 250 grams, the appropriate Rimmer starting point is ten to thirteen years. The Crown Advocate sought for a starting point of twelve years for all three defendants, but they were sentenced by the Royal Court on the basis that the appropriate starting point was eleven years for Martin Gregory and Duncan Raffray and ten years for Elaine Gregory to reflect her lesser involvement. The street value of the heroin imported was between £75,000 and £100,000 with a wholesale value of between £35,000 and £47,000. 4. In essence with regard to starting points, it is Elaine Gregory's contention that the starting point for

her should have been far less than that for her husband to reflect her lesser involvement in the whole exercise. Duncan Raffray contends that there was no basis for taking the same starting point for him as was taken in the case of Martin Gregory. With regard to mitigation both contend that the amount allowed for mitigation should be greater, but of course in the case of Duncan Raffray there is no question of any discount being allowed for a plea of guilty. Accordingly in order to consider those contentions it is necessary to consider in detail the circumstances leading up to the original importation of the heroin into the Island by Elaine and Martin Gregory and its subsequent passing to Duncan Raffray . 5. On 17 August 2004 Martin and Elaine Gregory, both aged approximately 45, arrived as passengers in Jersey and were seen disembarking from the ferry which had arrived from Poole. They were taken by coach to the hotel where they had been booked in for a stay of seven nights. Martin Gregory subsequently gave a full statement of the events leading up to their arrival in Jersey, although he did not name his supplier. Apparently a man arrived at the Gregory's home in Liverpool and handed over drugs that were contained in 27 packages. Martin Gregory says he thought they were amphetamines (although of course this is irrelevant for the purpose of sentence as made clear in Rimmer). He was prepared to take these drugs to Jersey in order to clear a debt of £2,000 arising from his use of cocaine, and by the promise of free travel and a holiday in Jersey for him and his wife. He and Elaine Gregory were taken to Lime Street Station in Liverpool from where they travelled by train to Poole. At some stage he ingested the packages of drugs and they were imported into Jersey internally. Over the next two days after importation they were for the most part expelled with the use of laxatives. He became unwell. Elaine Gregory at that stage became aware of what was happening. Some of the drugs were not expelled until much later when Martin Gregory was under police custody; two of the packages having split were found to be empty. 6. Over the next two days Elaine Gregory made frequent telephone calls to contacts in the UK, as a result of which she was given the number by which they were to make contact with the person who was to take possession of the heroin. This turned out to be Duncan Raffray , who was previously unknown to them. When Elaine Gregory was arrested there was found on her a piece of paper on which was written the name of "Duncan" together with his mobile telephone number and how they should recognise him. The meeting had been arranged by Elaine Gregory with Duncan Raffray to take place at a bar in St Helier . The Gregorys went to the bar first, looked round and then left. Then Duncan Raffray arrived and sat down at a table at the rear of the premises. He had a rucksack with him. He bought himself a drink. Elaine Gregory, wearing distinctive clothing, arrived next, bought herself a drink and sat down at the table opposite Duncan Raffray , and they were later joined by Martin Gregory who was carrying a plastic bag which he placed on the table. Elaine Gregory picked up the bag and placed it in front of Duncan Raffray . The plastic bag was later found in the rucksack. After the handover Elaine Gregory left to go to the toilet and it was later discovered that she had tried three times to make telephone calls to the UK contacts without success. She did however succeed in contacting them on Raffray's mobile telephone, no doubt to say that the handover was complete. They were then arrested and searched. The rucksack was found to contain the wrapped packages of heroin. 7. Although it is not disputed that Elaine Gregory was unaware before her arrival in the Island that the purpose of the visit to Jersey was to import heroin, or other prohibited substances, once she had arrived she played a full and active role in the events which occurred. She knew

very well at that stage that her husband was in the process of expelling the packages by the use of laxatives. She communicated with the UK contacts whom she knew and it was she who made the arrangements for the handover of the heroin and effecting it. Although she did not know of the original plan, she fully adopted that plan and its subsequent execution, and did nothing to distance herself from it. In sentencing Elaine Gregory the Court made it clear that they were adopting a lesser starting point than for her husband but we consider that they were correct in not evaluating her role as being significantly less, particularly given her invaluable contribution to the plan when in Jersey. We consider that the Royal Court was correct in not treating Elaine Gregory's role as being such as to justify treating her exceptionally as falling outside the 10-13 year bracket. We bear in mind the remarks of this Court in *Whitehouse*, Jersey Court of Appeal, 18 July 2002. It is true that she said that she only went ahead with the scheme when the contact told them to do so and that she was frightened by the possibility of reprisals if they did not go ahead. However that is not something particular to Elaine Gregory but something which affected them both and inevitably happens in a situation such as the one here, for the fear of reprisals is something which is almost always present in this type of case (see *Whitehouse supra*). 8. It is clear that the Royal Court considered that Elaine Gregory was to be treated as someone with real responsibility for what she and her husband did, although with a slightly smaller degree of responsibility, and not to be treated as an exceptional case so as to fall outside the bracket. We can see nothing to fault that evaluation and in all the circumstances we can see nothing to fault the ten year starting point in her case. 9. It was contended on behalf of Elaine Gregory that her case should be treated in the same way as *Scott Andrew McLean Sumner*, JCA 2 March 2005, where a sentence of two years, reduced from a starting point of seven years, was imposed on Sumner who, once the drugs were imported, drove the car to take them to a safe place in circumstances where he had not been involved in the original importation. However we do not consider that there is any basis for such a contention. Although Elaine Gregory was not involved in the actual importation, we consider that she is to be treated as an active, essential and knowing participant in the process of passing the imported drugs to the next essential link in the chain. We consider the reduction of one year in the starting point to be an appropriate reduction for her not being involved in the actual importation, thus taking her to the lowest point of the bracket. 10. Turning now to *Duncan Raffray*, we can see no possible basis for treating his involvement as being any less than that of *Martin Gregory* and therefore we consider him as someone for whom a starting point of eleven years was wholly appropriate. Of course it is correct that he was not actually involved with the actual importation, but nevertheless his role was no less significant than that of the importer. He clearly played an important and trusted role in the onward transmission of the heroin from importer to the actual commercialiser of the heroin and thus on its path to the eventual consumer. It is a very significant role and no less important than that of *Martin Gregory*. 11. Turning now to the question of mitigation for Elaine Gregory, we consider that there can be no question but that the reduction from the ten year starting point by five years for mitigation cannot be faulted. We consider the Royal Court took full account of her early guilty plea, the fact that she had no previous convictions for drugs, her remorse, the effect on her teenage daughter and the fact that she gave to the police the name of the person who might have some connection with the importation. 12. With regard to *Duncan Raffray*, there can

obviously be no reduction for a plea of guilty or for remorse. There also has to be taken into account the fact that he cannot be given any reduction for good character as he had only recently been released from prison at the end of a sentence of ten years for a previous serious offence of importation of prohibited substances. The Royal Court reduced his sentence by one year to take into account that whilst in prison he had been a model prisoner, that he had a good work record after he left prison and had looked after his parents. We consider that reduction to be an appropriate reduction. 13. The additional factor for Duncan Raffray is that it is contended that he gave the same name to the police as had Martin and Elaine Gregory and that accordingly he should have received a reduction in sentence to take that into account. It would seem that the reduction for this for Martin and Elaine Gregory probably amounted to one year, having assumed a reduction of one third for a plea of guilty and one year for personal mitigation factors. Although the question of his statement naming the person was considered for use at his trial, it was not advanced by way of mitigation, as had been the case for Elaine and Martin Gregory who were both sentenced at the same time. Duncan Raffray's advocate at the time of the sentence (Advocate Haines) knew about the statement but did not make reference to it because he did not consider that it would have any mitigating effect. In this we consider that he was correct. The statement made by Duncan Raffray certainly named the same person, as did Elaine and Martin Gregory, but the statement was made not for the purpose of assisting the police but for the purpose of advancing his defence at the trial to show that his attendance at the bar was, from his point of view, intended to be purely social and that he knew nothing about the importation or that the plastic bag contained drugs. That is a completely different situation from one in which a defendant names a source whilst showing true remorse and pleading guilty. Accordingly we do not consider that there would have been any mitigating effect if the statement had been referred to by way of mitigation. 14. It therefore follows that we can see no possible basis, in the case of either Elaine Gregory or Duncan Raffray for saying that either sentence was manifestly excessive or wrong in principle and accordingly, whilst we give leave to appeal in the case of Duncan Raffray on account of the question as to the use of his statement, we dismiss both appeals. Authorities Mooney and Sumner -v- A. G. [2005]JCA023. Rimmer Lusk & Bade -v- A. G. [2001]JLR373. Whitehouse -v- A. G. [2002] JCA134. Page Last Updated: 18 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria