No. 200007361/Y5
Neutral Citation Number: [2001] EWCA Crim 1332

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Monday 14th May, 2001

B e f o r e:

LORD JUSTICE MANTELL
MR JUSTICE PENRY-DAVEY
AND
HIS HONOUR JUDGE RIVLIN QC
SITTING AS A JUDGE OF THE
COURT OF APPEAL CRIMINAL DIVISION

- - - - - - -

R E G I N A

- v -

GENA NGIAM

- - - - - - - - -

Computer Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

MR B WAYLEN appeared on behalf of the Appellant.

J U D G M E N T

(As Approved)

1. MR JUSTICE PENRY-DAVEY:On 23rd October 2000, the appellant pleaded guilty to having in her possession some 50 kilogrammes of a class A drug with intent to supply to others. She was committed to the Crown Court for sentence and, on 1st December 2000 in

the Crown Court at Wood Green, was sentenced to six years' imprisonment. She appeals against sentence with the leave of the single judge.

2. On the morning of 21st October 2000, police officers on mobile patrol in southwest London stopped a Volkswagen Golf motorcar being driven by the appellant. In the boot of the vehicle, officers found a large suitcase with a padlock. When asked what was in the case, the appellant said "I don't know, it's not mine." She said it belonged to somebody called Peter from Manchester who had asked her to pick it up and take it back.

3. The officers broke the padlock and the suitcase was found to contain 50 kilogrammes of heroin at 79 per cent purity. The appellant was then arrested. When interviewed her solicitor read a prepared statement which said:

> "Last Wednesday I received a call asking me to deliver a package to London. Whilst I was in London I was contacted again and asked to bring a package back to Liverpool. I did not know what was in either package and certainly did not know it was heroin. Having discovered the amount of heroin involved, and its value, I do not wish to answer any questions as I am concerned about the position I am in."

4. It became apparent in due course that the appellant was contending that she believed the drug to be cannabis. It was originally proposed to hold a Newton hearing to resolve that issue. In the event, the Crown accepted that that was her belief and the judge, having heard that, indicated that he would pass sentence on that basis. He accepted that she had been acting as a courier, but equally pointed out that she was well aware of the risks.

5. Her previous convictions included one of possession of a controlled drug and a further conviction for the importation of 24 Ecstasy tablets and some cannabis cigarettes. For that matter she was placed on probation. The judge indicated that her convictions were minor compared with the matter in respect of which she had been charged, but he went on to say:

> "... you know, as well as anybody else in this country knows, that those who assist the traffickers in any drugs play an important part in causing crime, distress and mayhem to everybody; and particularly in Liverpool where that is a well-known problem."

6. Mr Waylen submits that having regard to the weight of drugs, and the fact that the appellant believed them to be cannabis rather than heroin, the sentence was out of line compared with the guidelines for importations of medium quantities of cannabis.

7. That submission, in our judgment, involves a misapprehension. The appellant pleaded guilty to possession of a very substantial quantity of heroin with intent to supply. The fact, as was accepted by the Crown, that she believed the drug to be cannabis rather than heroin was certainly a mitigating factor but did not mean that the judge was obliged to sentence her on the basis upon which he would have sentenced her had the drugs in fact been cannabis. That much is clear from the case of R v Bilinski [1988] 9 CAR(S) 360, in which Lord Lane CJ said at page 363:

> "We are of the view that the defendant's belief in these circumstances is relevant to punishment and that the man who believes he is importing cannabis is indeed less culpable than he who knows it to be heroin. It should be said that Steyn J was apparently not referred to any authority on the point.

> To what extent the punishment should be mitigated by this factor will obviously depend upon all the circumstances, amongst them being the degree of care exercised by the defendant.
>
> How should the issue be determined? In some cases no doubt it will be necessary for the judge to hear evidence on the principles set out in Newton [1982] 4 Cr App R (S) 388. If that procedure had been adopted in the present case, as Steyn J says it would have been had he considered the point to be relevant, the appellant would probably have been the only witness apart perhaps from someone to speak as to the street value of these packages had they contained cannabis rather than heroin. It is difficult to see what the appellant could have said other than that which he had already stated in his interviews with the Customs Officers. If so, it is scarcely likely that the judge would have been in any doubt that the appellant must have known the substance was heroin. Indeed the cases almost if not entirely falls within the ambit of the decision in Hawkins [1985] 8 Cr App R (S) 351. Where the defendant's story is manifestly false the judge is entitled to reject it out of hand without hearing evidence. Whether that is so or not, we take the view that the exercise of only a small degree of curiosity, inquiry or care would have revealed the true nature of the drug in this case and that accordingly the mitigating effect of the belief, if held, was small."

8. Mr Waylen points out that the circumstances in this case involved the placing of a padlocked suitcase in the boot of the appellant's car. He submits that it would have been not just unwise in the circumstances, but very difficult for her to have ascertained the true contents of that suitcase.

9. It is thus the situation, in our judgment, that the appellant was entitled to pray in aid in mitigation of this very serious offence the fact that she believed the drugs to be cannabis and would have had some difficulty ascertaining the truth, and was therefore entitled to some reduction from the appropriate sentence for the possession of a substantial quantity of heroin with intent to supply on that basis. She was not entitled to be sentenced on the basis that the drugs were in fact cannabis.

10. Even taking into account substantially in mitigation the effect of her belief in this case, where Mr Waylen acknowledges that the appropriate sentence on the basis that the possession was of heroin with intent to supply would on the face of it have been in the region of 15 to 20 years, the effect of the mitigation in this case was very substantially to reduce that sentence.

11. In our judgment, there is no basis whatever for saying that the sentence of six years imposed in respect of this offence was manifestly excessive or wrong in principle. Accordingly, this appeal is dismissed.