

Judgment 19/2007

**Adrian Charles George – Court of Appeal
(Criminal Appeal 364) – 4th July 2007**

Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 – importation of cannabis resin – appeal against conviction – whether the decision was obviously and palpably wrong – circumstantial evidence – appeal dismissed – appeal against sentence dismissed

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

No. 364

Criminal

The 4th day of July, 2007 before David Arthur John Vaughan, Esquire, C.B.E. Q.C., presiding; Dame Heather Steel, D.B.E., and Sir de Vic Carey.

THE LAW OFFICERS OF THE CROWN

v

ADRIAN CHARLES GEORGE

In the matter of applications for leave to appeal against conviction and sentence, from the decisions of the Royal Court on 24th January, 2007 and 23rd February, 2007, respectively;

THE COURT, having on 3rd July, 2007, heard Advocate A.M. Merrien for the Applicant and Crown Advocate G.D. McKerrell thereon, this day GAVE JUDGMENT in the attached terms and:-

1. GRANTED leave to appeal against conviction;
2. DISMISSED the appeal against conviction; and
3. DISMISSED the application for leave to appeal against sentence.

K H TOUGH

Registrar of the Court of Appeal

**IN THE COURT OF APPEAL
OF THE ISLAND OF GUERNSEY**

Wednesday 4 July 2007

Between

ADRIAN CHARLES GEORGE

v

THE LAW OFFICERS OF THE CROWN

Appellant

Respondent

Before

David Arthur John Vaughan, CBE QC, presiding
Dame Heather Steel, DBE
Sir de Vic Carey

STEEL, J.A.

This is the judgment of the Court

1. On the 24th January 2007 the Appellant Adrian Charles George, who is 41 years of age was convicted in the Royal Court of an offence of being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods; contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 as amended.
2. On the 23rd February 2007 the Appellant was sentenced to eight years six months imprisonment, such sentence to reckon from the 20th February 2006.
3. His Co-Defendants, Warren Edward Cyril Blaize and Richard William Baum, who had pleaded guilty to the same charge were each sentenced to five years imprisonment, such sentence to reckon from the 20th February 2006.
4. The Appellant seeks leave to appeal his conviction and sentence.
5. The ground on which the Appellant seeks to appeal his conviction is that the decision of the Court was obviously and palpably wrong. We grant him leave to appeal his conviction.
6. The ground on which the Appellant seeks to appeal his sentence is that it is out of proportion to the gravity of the offence and, setting aside the difference as a result of pleas, created a disparity in the sentence.
7. We are grateful to Advocate Merrien and Advocate McKerrell for their careful written and oral submissions and for the help they have provided to the court.

8. The offence concerned the seizure of a commercial quantity of Class B drugs, namely 11.84 kilograms of cannabis resin with a local resale value of about £100,000.
9. The Appellant shared a two bedroomed flat with the Co-Defendant Baum. The flat was above a café, Fryer Tuck's, also known as Halfway Café. This business was run by Baum. The Appellant was the proprietor of a sandwich shop in Le Pollet called the Lunchbox.
10. On the morning of 20th February 2006 a shipment of 76 tubs of vegetable oil, split equally between two pallets, was delivered to Alliance Cash and Carry Ltd, Braye Road Industrial Estates, Vale. Attached to the pallets were invoices showing the goods as 76x Prep Ultra Vegetable Oil 16 LTR consigned to Alliance Foods at Braye Road Industrial estate and that they had been sent by Chip Chop Catering Supplies, Unit 2, Well Lane Farm Buildings, Antrobus, CW9 6JF. Its telephone number was stated to be 07768665636. Checks subsequently made revealed that Chip Chop Supplies was a fictitious body.
11. Alliance Cash and Carry had not ordered the two pallets of oil, which were both shrink wrapped. Approximately 10 minutes after the pallets arrived at Alliance an employee received a telephone call from Baum asking if the delivery from Chip Chop had been received. Baum said that the delivery was his and that he would arrange for it to be picked up shortly.
12. About 20-30 minutes later, Blaize arrived at Alliance in a white van that he had hired. When the pallets were identified to him Blaize undid the wrapping on one pallet and loaded the tubs of oil into the van. Two of the tubs contained the cannabis, which was concealed within the oil. The oil is normally solid until heated. The other pallet of oil was left at Alliance. Having loaded the first pallet into the van Blaize moved to a quieter part of the industrial estates where he met Baum who took possession of the tubs which contained the cannabis.
13. Whilst the drugs were in the delivery area at Alliance, the Appellant was at Alliance, as demonstrated by a receipt timed at 9.49 a.m. He claimed that his reason for being there was to pay an outstanding bill. He also took the opportunity to buy a few items for his business. He claimed that he then went on to Bucktrouts before going back to his flat. Blaize started to deliver on an unsolicited basis some of the tubs of oil from his van. Two tubs were left with a wholesale supplier in the Bordeaux area, and two tubs at Beaton's fish and chip shop, outside which Blaize was arrested.
14. The Appellant was seen walking from the public car park towards Fryer Tuck's Café about 10.30 a.m. At approximately 11.25 a.m. Customs Officers entered the flat above the café and arrested the Appellant. Baum had been arrested at 11.20 a.m. as he left the van he had parked at the rear of the premises.
15. A full search was made of the flat and the café. Items of paperwork that related to Chip Chop and Alliance Foods were found in a large rubbish bin in the car park area of the café. In the Appellant's bedroom, in the pocket of his jeans a piece of Holiday Inn writing paper was found that had the

name Rob written on it and a telephone number which was the same as the telephone number on the Chip Chop Supplies invoices which accompanied the two pallets of oil to Guernsey.

16. The search also uncovered the drugs in an outbuilding at the rear of the premises. They were hidden within the solidified oil in two tubs of Prep Ultra. The tubs had been put there before the Customs Officers arrived at 11.20 a.m. These were the only two tubs of Prep Ultra on the premises. Both of these tubs had a black mark on the lid which was not found on any of the remaining 74 tubs. These were two tubs that had been given by Blaize to Baum near Alliance who had driven to the Café storeroom/outbuilding before the Customs Officers arrived.
17. The paperwork relating to the Appellant's visit to Alliance and two red Alliance bags were recovered from the boot of his car.
18. A search was conducted at the Appellant's sandwich shop, the Lunchbox, on 24th February, 2006. In a box on the floor were numerous sheets of paper. Many were blank, but some were also printed.
19. A number related to Alliance and to Chip Chop and a consignment of Prep Ultra cooking oil. A forensic analysis revealed that a number of documents in the box were used in the construction of the master copy invoices that accompanied the consignment of Prep Ultra oil sent by Chip Chop to Alliance. The fingerprints of Baum were found on some of the construction documents, as they were also to be found on the invoices that accompanied the 76 tubs sent to Alliance. Fingerprints relating to Blaize were also found on one of the construction documents that had been used to create the master invoice.
20. Chip Chop is a fictitious company which purported to operate from premises in Antrobus in Cheshire. The address Unit 2 comprises some outbuildings which are let out. A person who called himself Rob Williams rented Unit 2 for a period of six months from 1st November 2005, and a tenancy agreement was drawn up. Rob gave two contact numbers, one of which was 17811 031501. The rent was paid for the first couple of months, but thereafter payments stopped and the landlord could not trace Rob Williams. It was from there that a local haulier collected the two pallets on 15th February 2006. He told Customs that apart from that consignment, there was little else in the unit and no obvious business activity taking place. This was confirmed by a Customs Officer who inspected the unit on 22nd February 2006.
21. When the Appellant was arrested his mobile phone identified as George2, was examined and it was revealed that on 10th October 2005 there was contact between that phone and the number given by Rob to the letting agent for Unit 2. The call was made between Rob's number and George2 phone.
22. The Appellant admitted using another phone recovered from his flat. He used this phone identified as George3 whilst in England in February 2006. This phone was shown to have had two contacts with the number for Chip

Chop on 3rd February. Listed in the “last number received” memory of George3 was the Chip Chop number.

23. Further analysis of the Appellant’s mobile phones showed four telephone contacts in December 2005 between the number of a SIM card found in the Appellant’s luggage when it was secretly examined at the Airport on 21st December, and the Chip Chop number. Those contacts took place when the Appellant was in England.
24. A search was made at Unit 2 also an address 25 Douglas Road Leigh in England. A SIM card was found there which was found to contain in its abbreviated dialling list,
 - 1) the number on the Chip Chop invoice
 - 2) the telephone number of the SIM card found in the luggage of the Appellant in December and
 - 3) the telephone number of the mobile phone George3 that was used by the Appellant to contact Rob during his trip to England in February. The Officers also found a shrink gun at 25 Douglas Road, documentation relating to Unit 2, and documentation that referred to a Robert Wilkinson. The Appellant later admitted meeting Rob at a motorway service station in February 2006. Rob was clearly shown to be the same person Rob Williams and/or Robert Wilkinson.
25. The consignment of 76 tubs of Prep Ultra oil that was received at Alliance was sourced from a wholesale food supplier in the Manchester area known as Makro. One of their trade card holders is recorded as being Mr and Mrs George trading as Lunchbox, Le Pollet, St Peter Port, Guernsey. Records showed that the 76 tubs of cooking oil were purchased for cash using that trade card on 13th January, when one tub was purchased, and the further 75 tubs on 26th January. The batch numbers on the tubs recovered in Guernsey corresponded with the batch numbers provided to Customs by the company which had supplied the oil to Makro. It was not alleged by the Crown that the Appellant personally purchased the oil. An examination of Makro records revealed that there had been previous purchases from Makro on that card in 2004, and it was shown during the trial that documentation found in the Appellant’s bedroom concerning earlier consignments of cooking oil and mayonnaise shipped to Guernsey corresponded with purchases of these products at Makro using the Lunchbox trade card.
26. Following his arrest the Appellant was interviewed on six occasions.
27. At the trial the Appellant gave evidence. He denied the allegation of being knowingly concerned and provided explanations for the various pieces of evidence on which the prosecution relied. We were reminded by Advocate Merrien of the Appellant’s explanations which it is submitted may not necessarily be consistent with guilt or give rise to the inferences sought to be drawn by the prosecution.

28. There was no direct evidence which implicated the Appellant in the importation; the Crown's case was that the circumstances disclosed by the evidence were compelling in proof of the Appellant's guilt. The prosecution described a remarkable series of events and coincidences which were only consistent with the Appellant being knowingly concerned in the fraudulent importation.
29. The circumstances upon which the prosecution relied were
 1. The Appellant's presence at Alliance at the time the drugs were delivered.
 2. The Appellant's presence at the Halfway Café during the period between the delivery of the drugs and the arrival of the Customs Officers.
 3. The oil in which the drugs were concealed was purchased using a Makro trade card issued to Mr and Mrs George of Lunchbox, at a time when the Appellant was not in England.
 4. Documents found in a box at the Appellant's business premises, Lunchbox, were used to create fictitious Chip Chop invoices which accompanied the oil purchased from Makro to Guernsey.
 5. The Appellant's connection to Rob, the tenant of Unit 2, the person whose name and telephone number were found on the paper found in the Appellant's jeans, the number being the same as shown on the Chip Chop invoice.
 6. This connection included a meeting between the Appellant and Rob at a motorway service station at Bridgend, in the course of which the Appellant handed £1,000 to Rob. The Appellant had initially denied this meeting, but explained in evidence that he was acting on behalf of his Co-Defendant Blaize and believed that the money was for foodstuffs.
 7. Documentation found in the Appellant's bedroom which related to earlier purchases of foodstuffs from Makro on a Lunchbox trade card of which the Appellant claimed to have no knowledge.
 8. Telephone contacts between the Appellant, Rob and the Co-Defendants which taken together indicated involvement in the fraudulent enterprise.
30. It was conceded by the prosecution that no fingerprints or other forensic evidence linked the Appellant to the documentation. Evidence was given by a representative from Makro that no checks were made as to whether a purchaser was an account holder, and it was accepted that at the time when the oil was purchased the Appellant was in Guernsey.
31. At the trial much of the evidence was not disputed and was read. There were few live witnesses. The Appellant gave evidence in support of his case that he had no knowledge that the drugs were imported either in his

name or otherwise. He gave evidence in relation to each of the matters relied on by the prosecution and was cross examined.

32. The Appellant explained that his presence at Alliance on the day the drugs were delivered was to pay an outstanding bill and to purchase some soup/soup base. He was not in the area where the drugs were, and he was not there to check that the delivery had been made.
33. There was no evidence as to when the drugs were taken to Halfway Café, the Appellant was in his bedroom which he used as an office, and the drugs were recovered from an outbuilding.
34. The Appellant gave evidence that he did not recollect ever having applied for a Makro trade card. The evidence concerning the telephone calls was investigated with the Appellant and he explained those calls in relation to Rob and denied that his answers were deliberately evasive or vague. He denied knowledge of the October 2005 call from Rob received on his George2 phone.
35. The Appellant denied that he was involved in producing or constructing the Chip Chop invoice or documentation.
36. It is not submitted that the Lieutenant Bailiff erred in his summing up, or that there was any misdirection or failure to direct the Court in relation to any legal or factual issue in the case. We agree. The direction given to the Jurats on circumstantial evidence was careful, full and fair. The Jurats were properly directed as to their approach to the inferences which might be drawn and the need to consider alternative inferences which might weaken or destroy the inferences suggested by the prosecution. The Jurats were warned not to speculate.
37. The summing up cannot be faulted and the Jurats were fairly and fully reminded of the Defence.
38. The only issue therefore is whether the verdict can be found to be obviously and palpably wrong, or one which cannot be reasonably supported having regard to the evidence.
39. We take into account that the appropriate test for this court to apply is that stated in The Law Officers of the Crown v Ogier and Le Noury 1989 Criminal Appeal No. 27 and confirmed in Law Officers of the Crown v Heather Helen Guest (Judgment 8/2003 Criminal Appeal No. 290).
40. Was this verdict obviously and palpably wrong or not reasonably supported by the evidence?
41. In our judgment this verdict was amply supported by the evidence, which was compelling. The Jurats heard and saw the Appellant and rejected his evidence.
42. There is no basis on which the verdict could arguably be considered to be obviously and palpably wrong and the appeal against conviction is dismissed.

43. The Appellant seeks leave to appeal his sentence of eight years six months imprisonment on the ground that the term is manifestly excessive for the grant of this offence and that there is unacceptable disparity between his sentence and the five year sentences passed on his Co-Defendants
44. It is conceded by Mr Merrien that the Richards 17th April 2002, guidelines apply, and that he cannot take issue with a starting point of ten years.
45. At the sentencing hearing the Lieutenant Bailiff had observed that the prosecution never put the case on the basis that Mr George was the brains behind the organisation, it simply put its case on the basis that he was knowingly involved in the importation. Advocate Merrien set out the available mitigation for the Appellant and invited the Court to take into account his hitherto good character. The Court took the same starting point for the three Defendants and did not thereby make any differentiation with regard to roles.
46. The Court had seen and heard the Appellant and the evidence given at his trial, and was well able to reach conclusions about his role. The Lieutenant Bailiff described this operation as disclosing a 'good deal of cunning planning' far removed from the normal run by a simple, often vulnerable, courier, but a well planned unlawful enterprise. The Lieutenant Bailiff used the words sophistication and deceit in relation to this operation which he went on to describe as a significant offence perpetrated for financial gain and which would have added a large amount of cannabis to the streets of Guernsey. He correctly stated that unlike the two Co-Defendants the discount for the Appellant was limited and the court discounted eighteen months from the appropriate starting point.
47. It cannot be argued that this sentence is manifestly excessive and the alleged disparity is fully explained by the guilty pleas and personal mitigation which applied to the two Co-Defendants.
48. The application for leave to appeal the sentence is refused.