

**Judgment 24/2008**

**Bruce Daniel Wayne Moran – Court of Appeal (Criminal Appeal 379) – 18 July 2008**

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**Importation of Class A Drugs – application for leave to appeal against conviction – held that the judge had only intervened when he considered it necessary and appropriate – no fault in the trial process – application refused - application for leave to appeal against sentence refused.**

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

**Criminal 379**

**The** 18th July, 2008 before David Arthur John Vaughan, CBE, QC, presiding, Dame Heather Steel, DBE, and James Walker McNeill, QC

**BRUCE DANIEL WAYNE MORAN**

**(Applicant)**

**V**

**LAW OFFICERS OF THE CROWN**

**(Respondent)**

On the application by the Applicant for leave to appeal from the convictions imposed on him by the Royal Court on 10 October 2007;

Whereas, on 16 June 2008, THE COURT, having heard Advocate S Mallett for the Applicant and Crown Advocate F Russell thereon, REFUSED the application and reserved its reasons;

THE COURT this day ISSUED JUDGMENT in the terms attached hereto

**K H TOUGH**

Registrar of the Court of Appeal

**Approved Text  
09.07.08**

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

**CRIMINAL DIVISION**

**Monday 16 June 2008**

**Before: David Arthur John Vaughan CBE QC  
Dame Heather Steel DBE  
James Walker McNeill QC**

**Between: BRUCE DANIEL WAYNE MORAN**

**Applicant**

and

**LAW OFFICERS OF THE CROWN**

**Respondent**

**Advocate S Mallett representing the Applicant  
Advocate F Russell representing the Crown**

**CASES REFERRED TO include: -**

Law Officers of the Crown v James Paul Collins 1989  
R v Kai-Whitewind 2005 EWCA 1092  
R v Sean Hoey Neutral Citation No. [2007] NICC 49  
R v Patrick Bryant [2005] EWCA Crim 2079  
R v Lashley [2005] EWCA Crim 2016  
Law Officers of the Crown v Presland Guernsey CA

**Application for leave to appeal convictions in the Royal Court before LB Russell Finch and 9 Jurats on 10th October 2007 of three offences contrary to Section 77 (1) (b) and Section 77 (2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 as amended**

- Count 1. Between 1st October 2005 and 29th October 2005 being knowingly concerned in the fraudulent evasion of the prohibition on the importation of controlled drugs, namely 44.1 grams of diamorphine, a controlled drug of Class A.
- Count 2. Between 1st October and 29th October 2005 being knowingly concerned in the fraudulent evasion of the prohibition on the importation of controlled drugs namely 5.42 grams of MDMA. A controlled drug of Class A.
- Count 3. Between 1st October 2005 and 29th October 2005 being knowingly concerned in the fraudulent evasion of the prohibition on the importation of controlled drugs, namely 6.76 grams of cocaine, a controlled drug of Class A.

## JUDGMENT

### Facts

1. On 27th October 2005 Gary Partridge, from Tamworth in Staffordshire, arrived in Guernsey as a foot passenger on the Commodore ferry from Portsmouth. After he left the ferry terminal he was arrested and taken into Customs detention. On 28th October he passed three packages which had been concealed internally and which he said he believed contained heroin. On examination those packages were found to contain 44.1 grams of heroin, 5.42 grams of MDMA, and 6.76 grams of cocaine. Relevant total street value is put between £9,860 and £14,920.
2. The Applicant who travelled on the same ferry in a car with a companion Cunniame, was stopped and questioned by Customs Officers and the vehicle in which he was travelling was searched. He said he had come to Guernsey to party and to drink. He had no controlled drugs on him but admitted that he was a regular user of controlled drugs. A screening test of his mobile phone gave a high reading for cocaine. He was interviewed twice and made 'no comment' answers. He was bailed by Customs on 28th October.
3. On 9th February 2006 he failed to answer bail and was arrested in England on 6th June 2006. He was remanded in custody, and has remained in custody since that date.
4. Enquiries revealed that both the Applicant and Partridge came from Tamworth in Staffordshire. Mobile phones which had been seized when they were arrested were analysed. The Applicant had one phone, Partridge, two. The phone directory on the Applicant's phone contained a number with the entry 'me' next to a number which was recorded on both of the phones recovered from Partridge identified by the name of Bob.
5. Contact between the phones of the Applicant and Partridge was shown on 17th October when a phone recovered from Partridge called the one recovered from the Applicant. On 26th October, the day before they travelled to Guernsey, Partridge called the Applicant and a series of calls were shown originating from the Applicant's phone to that of Partridge, some of which were not answered. Four separate entries between 21.36 and 21.46 show contact between those phones.
6. On 27th October, at 3.26 a.m. a further phone call was made from the Applicant's phone to that of Partridge.
7. Condor tickets for the Applicant, his companion Cunniame and Partridge were all booked at Portsmouth on the morning of 27th October at 07.48 hours. These were made at booking offices close to each other and bore consecutive numbers.
8. On recovery from Partridge the three packages were individually wrapped and sealed and sent for forensic examination together with saliva samples from the Applicant and his companion in the car.
9. The contents of the packages were decanted and analysed. The packaging was examined. One package consisted of three layers of plastic wrapping which contained one large and seven smaller packages, each of which had been separately knotted to secure the contents. The large inner package contained white powder, the seven smaller packages a brown crystalline powder. The knots were cut from each of the inner packages and the inner surfaces of those knots were swabbed. Samples from the surfaces of the seven smaller packages were sent for Low Copy Number

analysis, together with samples from the wrapping of all three packages recovered from Partridge. The results from the first two packages either implicated Partridge or were inconclusive. Samples from the single larger knot were then sent for Low Copy Number testing in January 2006 and a clear DNA match was found with the profile of the Applicant's DNA from his saliva sample.

10. The Crown case was that this evidence taken together demonstrated that the Applicant was intimately concerned in handling that package of drugs and with the drugs recovered from Partridge.
11. At his trial the Applicant did not give evidence and the integrity of the evidence, especially the forensic evidence was extensively challenged by Advocate Mallett.
12. We are grateful to Advocate Mallett and Advocate Russell for their written and oral submissions which we considered with care.
13. On 16th June 2008 we refused leave to appeal the three convictions indicating that this reasoned judgment would be handed down. In refusing leave we stated that we were not persuaded that it was arguable that the convictions were obviously and palpably wrong, nor that it was arguable that there was any fault in the trial process or the summing up. We further indicated that it was not arguable that the Lieutenant Bailiff made any error of law nor that the convictions were not supported by the evidence.
14. At the start of the hearing we had admitted, in evidence by consent, two documents which post dated the trial. The first a document dated April 2008 was entitled 'A Review of the Science of Low Template DNA Analysis' by Professor Brian Caddy, Dr Graham R Taylor and Dr Adrian M. T. Linacre. This review was initiated by the Forensic Science Regulator following the case of R v Sean Hoey 20/12/07 Neutral Citation Number [2007] NICC 49 which was a high profile case in which the validity of LCN DNA was severely criticised by the defence in terms of reproducibility lack of quantification, interpretation and the establishment of guidelines. The review concluded that the science supporting the delivery of Low Template DNA analysis is sound. For completeness we admitted a second document, namely a Press Release on behalf of the Forensic Institute Glasgow regarding the Caddy Review dated 15th April 2008. This was prepared by Professor Allan Jamieson and Dr Scott Bader, a witness in the present case. This release concludes with the words 'taking the review as the final word on the technique is an error with potentially serious consequences for the reputation of British science and for the Criminal Justice System.' These documents were relevant to the issues raised in this application and fell within the four criteria set out in Law Officers v James Paul Collins 1989.
15. We were invited to admit an affidavit from Dr Scott Bader which concerned the scientific issues considered at the trial and which related to his perceived impression of the way in which the trial judge conducted the trial which he described as 'unusual' and 'remarkable.' It is implicit in our finding that there was no fault in the trial process or the summing up that we rejected the admission of this affidavit.
16. There were numerous grounds on which this application was based.
17. It was submitted:
  1. That the verdict was unreasonable and/or cannot be supported having regard to the evidence.

2. That the judge erred in relation to questions of law.
  3. That the convictions were obviously and palpably wrong and that a miscarriage of justice had occurred.
  4. That the Applicant was denied a fair trial by the conduct of the Lieutenant Bailiff, which by constant interruptions and negative comments made it impossible for defending Counsel to do justice to the defence so that the tribunal was not seen to be independent and impartial.
18. We considered submission 4 first.
19. Advocate Mallett, with reference to the trial transcript referred the Court to instances where she alleged that the remarks made by the Lieutenant Bailiff demonstrated that he was unwilling to consider possible flaws in the scientific technique, or in relation to the possible contamination of the exhibits, or in relation to the possibly broken chain of the continuity in the handling and preservation of the exhibits.
20. We were not impressed by any of the criticisms relating to the way in which the trial was conducted. The judge did no more than he was bound to do in order to confine the evidence to that which was relevant in relation to the matters which were to be decided by the Jurats.
21. Advocate Mallett conceded that the summing up cannot be criticised. She further agreed that the judge was not in any way unfair to the defence witness Dr Bader during the course of his evidence and that he gave no indication that he was partisan during her closing speech. Her objections were based on what she alleged were frequent interruptions. Having studied the transcript with care we find no evidence of an unacceptable number of 'frequent' interruptions, the judge only intervened when he clearly considered it necessary and appropriate.
22. We are satisfied that nothing said or done by the judge during this trial could lead to the impression that the judge was biased or the Applicant disadvantaged. In the summing up the defence issues were fully and carefully put to the Jurats who were reminded throughout of the burden of proof. We reject the submission that the conduct or demeanour of the judge impacted on the fairness of the trial.
23. We then considered submission 1 to the effect that the verdicts cannot be supported having regard to the evidence, Advocate Mallett submitted that the expert evidence adduced by the Crown was flawed. First she complained that the experts were not registered with the Council for Registration of Forensic Practitioners. Next that the standard operating procedures were not followed because the requirements of the FSS were not adhered to in relation to samples being separated at the Weatherby laboratory. Further she raised the possibility of tampering having regard to possible breaks in the chain of handling and preserving the integrity of the exhibits. All these matters had been fully explored in evidence and the responses of the expert witnesses were before the Jurats for their consideration.
24. Advocate Russell for the Crown submitted that there was ample evidence on which the Jurats could convict. She indicated the links shown between the Applicant and the courier Partridge coupled with the DNA findings of the forensic scientists which, despite his reservations about the reliability of the technique, were accepted by Dr Bader for the defence.
25. As regards submission 2 it is not arguable that the judge erred in law either in relation to what Advocate Mallett described as inadmissible hearsay in the evidence of the

expert witnesses nor in relation to the status of the notes and documentation to which they referred. In the absence of any evidence to the contrary it was open to the Jurats to infer that the integrity of the exhibits was properly preserved in their handling and transmission. There is no evidential basis for the submissions made in relation to this part of the case. The Judge, on the evidence before the Court, correctly rejected the Defence submission that there was no case to answer at the conclusion of the Crown case.

26. As regards submission 3 we have considered each of the many particular matters raised on behalf of the Applicant, and without referring to each, we can find no aspect of this case where it can be argued that there may have been a miscarriage of justice or that the convictions should be quashed.
27. The application is therefore refused.

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

**Criminal 379**

**The** 18th July, 2008 before Dame Heather Steel, DBE, presiding, Sir de Vic Carey and James Walker McNeill, QC

**BRUCE DANIEL WAYNE MORAN**

**(Applicant)**

**V**

**LAW OFFICERS OF THE CROWN**

**(Respondent)**

On the application by the Applicant for leave to appeal out of time and for leave to appeal from the sentences imposed on him by the Royal Court on 3 December 2007;

Whereas, on 17 June 2008, THE COURT, having heard the Applicant in person and Crown Advocate F Russell thereon: -

1. GRANTED the application for leave to appeal out of time;
2. REFUSED the application for leave to appeal against sentence, reasons being reserved ; and
3. ORDERED that the drugs and other paraphernalia held by the Customs and Immigration Service should be retained by Customs for one year and then destroyed, unless application to the contrary is made during that period;

THE COURT this day ISSUED JUDGMENT in the terms attached hereto

**K H TOUGH**

Registrar of the Court of Appeal

**Approved Text  
09.07.08**

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

**CRIMINAL DIVISION**

**Tuesday 17 June 2008**

**Before:**

**Sir de Vic Carey  
Dame Heather Steel DBE  
James Walker McNeill QC**

**Between**

**BRUCE DANIEL WAYNE MORAN**

**Applicant**

and

**LAW OFFICERS OF THE CROWN**

**Respondent**

**The Applicant appeared in person  
Advocate Fiona Russell represented the Crown**

**Application for leave to appeal sentences passed by Lieutenant Bailiff Finch in the Royal Court on 3rd December 2007:-**

Count 1 - 9 years imprisonment  
Count 2 - 7 years imprisonment concurrent  
Count 3 - 7 years imprisonment concurrent

For an admitted Bail Act offence 1 months imprisonment was imposed. The total sentence of nine years one months imprisonment to reckon from 6th June 2006. Compulsory Supervision was ordered after release under the Supervision of Offenders Law 2004 for one quarter of the total sentence.

On 17th March 2006 the Co Defendant Gary Partridge, who had admitted Counts 1, 2 and 3 was sentenced to six years imprisonment.

**JUDGMENT**

On 17 June 2008 the Court of Appeal considered an application made by the Applicant on his own behalf for leave to appeal his sentence out of time, and for leave to appeal the sentences passed. We granted leave for the Applicant to apply out of time as he may have misunderstood that his application for leave to appeal conviction did not cover a sentence application. Having considered all the circumstances we refused the application for leave to appeal his total sentence which was entirely appropriate for the offences in this case, and for the applicant's role as demonstrated by the evidence.