

Judgment 33/2007

Andrew John Dunn – Court of Appeal (Criminal Appeal 363) – 25 September 2007

Assault - possession with intent to supply, and supply, of Class A drug – criminal damage – appeal against sentence – starting point adopted had been the minimum sentence in the lowest band for Class A drugs in the Richards guidelines – application for leave to appeal dismissed

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

Criminal No. 363

The 25th day of September, 2007 before Jonathan Philip Chadwick Sumption, Esquire, O.B.E, Q.C., presiding, Dame Heather Steel, D.B.E., and James Walker McNeill, Esquire, Q.C.

THE LAW OFFICERS OF THE CROWN

- v -

ANDREW JOHN DUNN

(The Applicant)

On the application of the above Applicant for leave to appeal from the sentence imposed on him by the Royal Court on the 20th day of February, 2007;

THE COURT, having on the 24th day of September, 2007 heard the Applicant in person, and Crown Advocate G.D. McKerrell, thereon, this day GAVE JUDGMENT and:-

1. DISMISSED the application for leave to appeal; and
2. DIRECTED, for the purposes of the Proviso to Section 37(3) of the Court of Appeal (Guernsey) Law, 1961 that no part of the time during which the Applicant, when in custody, was specially treated as such, shall be disregarded in computing the sentence to which the Applicant is subject.

K H TOUGH
Registrar of the Court of Appeal.

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

CRIMINAL DIVISION

Tuesday 25 September 2007

**Before: Jonathan Philip Sumption., Esq., OBE., QC
Dame Anne Heather Steel DBE
James Walker McNeill., Esq., QC**

**In the matter of an Application to the Court for leave to
appeal sentence by**

Between: ANDREW JOHN DUNN
v **Applicant**
THE LAW OFFICERS OF THE CROWN
Respondent
**The Applicant representing himself
Advocate G D McKerrell for the Crown**

STEEL, JA:

This is the judgment of the Court

- 1 The Applicant, who is a UK resident, now aged 31 years, seeks leave to appeal sentence, following refusal by the single judge.
- 2 On 3rd August 2006 in the Royal Court, the Applicant pleaded not guilty to the following counts on an indictment, namely
 - Count 1: that on 11th May 2006 he assaulted Robert David Le Prevost
 - Count 2: that on the 11th May 2006 he assaulted Georgina Louise Burrows
 - Count 4: that on 11th May 2006 he had in his possession a controlled drug of class A, namely MDMA, with intent to supply it to another
 - Count 5: that on 11th May 2006 he offered to supply a controlled drug of class A, namely MDMA, to another.

He pleaded guilty to Count 3 that on 11th May 2006 he caused criminal damage to a Honda Civic motor car belonging to Georgina Louise Burrows.

3. On 11th January 2007 he was convicted of Counts 1, 2, 4 and 5.
4. On 20th February 2007, the Court having heard Advocate Russell for the Crown and Advocate Lockwood for the Applicant, and having considered a Social Enquiry Report by Kate Clarke, Probation Officer, sentenced the Applicant as follows:

Count 1: Three months imprisonment

Count 2: One months imprisonment

Count 3: One months imprisonment

Count 4: Seven years imprisonment

Count 5: Seven years imprisonment

All sentences to run concurrently from 11th May 2006.

The Royal Court made a drug trafficking confiscation order (which the Applicant did not oppose) in the sum of £1,154.89, together with compensation orders in the total sum of £869.60. The exhibit, the tablets MTJ/63/01 was the subject of a forfeiture and destruction order.

5. The Applicant seeks leave to appeal the sentences passed in respect of counts 4 and 5 on the ground that they are manifestly excessive. This Court has considered the written submissions of Advocate Ayres, and the Applicant now appears in person. He addressed the Court, accepting that he was not entitled to a discount of $\frac{1}{3}$, having been convicted. He compared his sentence with 14 other cases which concerned ecstasy, and invited the Court to conclude that 7 years was manifestly excessive. The submission is that the Royal Court selected a significantly higher starting point than was appropriate in all the circumstances of the case. The starting point taken by the Royal Court was 7 years imprisonment for counts 4 and 5. This starting point is within the appropriate band set out in *Richards and others v Law Officers of the Crown CA* 17th April 2002.
6. All the counts in the indictment arose out of an incident which took place in St Peter Port on the evening of Thursday 11th May 2006. Shortly after 10.45 pm Miss Georgina Burrows drove her car into town with her boyfriend Mr Robert

Le Prevost as a front seat passenger. She parked her car, a Honda Civic, outside the Quayside entrance to Woolworths store, facing north towards the Bridge, and Mr Le Prevost left the car to deliver a letter to a nearby office.

7. Miss Burrows noticed the Applicant standing near to the entrance to Woolworths and formed the impression that he was drunk. He approached the car, and Miss Burrows, who was alone and in the driver's seat, looked away. The applicant opened the front passenger door and began to get into the car. Miss Burrows asked him what he wanted and the Applicant asked her for a lift home. Miss Burrows told him to get out of the car but he continued to try to climb into the passenger seat. As Mr Le Prevost returned to the car he saw the Applicant attempt to get into the car and heard Miss Burrows telling him he was not getting a lift and to go away.
8. Mr Le Prevost also told the Applicant to go and tried to move him away from his car. He tried to shut the car door. The Applicant continued to ask for a lift, and Miss Burrows heard him say words to the effect of *'I'll give you money to give me a lift home, I'll give you drugs'*. Mr Le Prevost was shown two or three small white tablets which looked like ecstasy, by the Applicant, which he offered to give to the couple. Mr Le Prevost said *'you're not getting a lift with us, please move out of the way so that I can shut the door'*. The Applicant did not move.
9. Mr Le Prevost continued to try to get the Applicant away from the car, and told him he was not getting a lift with them. As he pushed the Applicant away from the car, the Applicant lunged at him with a clenched fist. A scuffle then broke out between the two men on the pavement, moving into the doorway of Woolworths. Miss Burrows got out of the car and tried to intervene and the Applicant lashed out punching her in the stomach. She called out for help and for the police to be called. Mr Le Prevost restrained the Applicant in a headlock, and whilst he was being held, the Applicant bit the thumb of Mr Le Prevost with considerable force. Mr Le Prevost broke free and he and Miss Burrows got back into the car. As they were about to drive away, the Applicant kicked the car and punched the passenger side window with his fist and caused damage, later assessed at £272.60.

10. Miss Burrows and Mr Le Prevost drove straight to the police station to report the incident and make complaints. They later identified the Applicant as the person involved.
11. The Applicant remained on the Quay, and was captured on CCTV approaching another car. He was arrested and cautioned at about 11 pm. The officers noticed that he was unsteady on his feet, he smelled strongly of intoxicants and his speech was slurred. He was searched by PC Todd who recovered a tissue which contained some solid small tablet like items from the Applicant's jacket pocket. When this was discovered the Applicant became agitated and said *'I don't know whose that is, where did it come from'*. In the rear right hand pocket of the Applicant's jeans PC Todd also found a large quantity of bank notes.
12. These were counted at the police station and totalled £1,154.89. £904.89 was in Guernsey currency and £250 in UK currency. The tissue was found to contain a number of white tablets which were later analysed and shown to be 13 intact tablets and some broken pieces of MDMA. The average weight of each complete tablet was 0.294 grams and the powder equivalent of three or four further actual tablets. At local street prices that number of tablets would have been worth between £130 and £325 in Guernsey at that time.
13. When he was arrested on suspicion of being in possession of controlled drugs and cautioned, he replied that they were not his.
14. In interview the Applicant claimed that he had no clear recollection of that night. He could not understand the allegations and said it was out of character. He could not remember being in a fight. He denied taking drugs or having drugs in his possession or purchasing any drugs whilst in Guernsey. He explained his possession of the cash by stating he had brought his savings from his wages as a carpenter, of approximately £2,000 with him to Guernsey, and unaware of the currency regulations had visited several banks to exchange the Bank of England notes for Guernsey currency. He was unable to provide any details of the banks in which these transactions took place. He told the officers that he arrived in Guernsey from the UK on 9th May for the liberation

day celebrations. He intended to find work and start a new life. He had changed his ferry ticket from departure on 11th May to 12th May because he had not got round to looking for work and had to return on the 12th for a cousin's first communion. He gave an account of his movements whilst he was in Guernsey prior to his arrest, and said that he had spent about £800. He made no comment when asked about a record of his having told the duty Doctor that he had taken up to five tablets on the night of his arrest. He insisted that he did not take controlled drugs.

15. At the trial the Applicant offered a different explanation for his possession of the tablets. He said he had been drinking and had taken five ecstasy tablets in the afternoon. He had arranged to buy some more, and was waiting on the Quay to collect them. When the tablets were given to him he had refused to pay and the fight was the result. He insisted that the money, £1,700, was from his wages, and that he had spent the previous day changing it into local currency despite his intention to go back to England the next day. He admitted that he had lied in interview. He denied that he was selling drugs.
16. As a result of the assault Mr Le Prevost was treated for a bite wound to his left thumb, he had to pay £147 to the Ambulance and Rescue Service and lost wages of £450. Miss Burrows, who was slightly bruised, did not suffer any significant injury as a result of the assault, but her car was damaged.
17. The Applicant has four previous court appearances with two convictions for drugs related offences. On the 12th July 2002 he was convicted by East Dorset Magistrates Court of possession of a class B drug for which he received a fine. He was fined for a public order offence and conditionally discharged for possessing a bladed article in public. On 21st June 2004 at the same court he was fined for motoring offences. On 19th January 2005 he was fined for possession of a controlled drug class C. On the 6th May 2005 he was sentenced at Bournemouth Crown Court to six months imprisonment for a racially aggravated assault. At the time of his arrest in Guernsey, he was on bail to East Dorset Magistrates Court for offences of threatening behaviour and common assault. The Applicant informed the Court that these charges had now been discontinued.

18. We have considered all the submissions made orally by the Applicant and in writing to the single judge by Advocate Ayres. We also take into account letters from the prison Chaplain and the prison Substance Misuse Worker.

19. In refusing leave, the single judge indicated that in taking the starting point of seven years the Royal Court had taken the minimum sentence in the lowest band for class A drugs in accordance with the guidance provided by Richards. The Applicant had no credit for a guilty plea available to him, and there was no other mitigation which impressed the Court. Two authorities were cited by Advocate Ayres, *David John Hutchinson* 2002 and *Andrew John Guilbert* 2006. In each case guilt had been admitted, and the quantities were greater, but fact specific cases can rarely assist this Court. The single judge accepted that the value of the drugs recovered in the present case was not great, but he noted that this has to be considered in the context of the money found in the Applicant's possession. He concluded correctly that the Jurats, having rejected the Applicant's explanation, were entitled in support of their conclusions to draw the inference that the cash represented, at least in part, the proceed of sale of other ecstasy tablets.

20. We are not persuaded that the concurrent sentences of seven years imprisonment passed in respect of counts 4 and 5 were manifestly excessive, or that the Royal Court erred in selecting a significantly higher starting point than was appropriate in all the circumstances of the case. We endorse the conclusion of the single judge that the sentence is unexceptionable and this application is refused.