

Judgment 48/2005

**John Michael Thackaberry – Royal Court
– 1 August, 2005**

Criminal appeal from the Magistrate’s Court – sentence – failure to provide specimen of breath and driving while disqualified – two months’ imprisonment on each count, consecutive – totality principle correctly applied – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 1st day of August, 2005 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Barbara Jean Bartie, and David Osmond Le Conte, Esquire, Jurats.

No.20 of 2005

In the action of THE LAW OFFICERS OF THE CROWN against JOHN MICHAEL THACKABERRY (“the Appellant”) to pursue the appeal of which the said Thackaberry gave notice against sentence imposed upon him by the Magistrate’s Court on the 21st day of June, 2005;

THE COURT having heard Advocate S. Mallett for the Appellant and Advocate P. Robey for the Crown DISMISSED the Appeal.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

The Bailiff delivered the decision of the Court in the following terms:-

Approved Text

Appeal Against Sentence

John Michael Thackaberry

1st August 2005

OFFENCES IN ENGLAND

1. On 21st June 2005 the Magistrate noted that you had been sentenced in 1991, 2000 and 2003 in England for offences of driving a motor vehicle with excess alcohol.

OFFENCES IN GUERNSEY

2. *First Guernsey Offence* - On 9th June 2003 you had appeared in the Guernsey Magistrate's Court for driving a motor vehicle whilst over the prescribed limit. You had been fined £800 and your driving licence had been suspended in all categories for 5 years.

3. *Second Guernsey Offence* - On 21st June 2005 you had by your own admission once again driven a motor vehicle in this Island with excess alcohol. On this occasion you had failed to provide 2 specimens of breath so the offence for which you were sentenced reflected that fact.

4. It is clear that your drink driving offending has been persistent. This was of relevance when the Magistrate on 21st June considered whether to impose a concurrent or consecutive sentence for the offence of driving whilst your licence had been suspended and some 4 hours later the offence of failing to provide a specimen.

5. As a matter of principle the Magistrate was entitled to impose a consecutive sentence provided of course that he respected the totality principle.

6. The Court has reminded itself of what was said on 8th June 2004 in the appeal of Mr Hatwell. The Court said this

“It is also important that these sentences are seen as deterrent sentences. Heavy drinkers must not drive and if they do they can be expected to go to prison if their alcohol readings are high.”

7. It is important that in appropriate cases deterrent sentences are composed. This was a case for a deterrent sentence.

8. Whilst the Magistrate did not state that he had applied the totality principle the Court is satisfied that the Magistrate must have applied it because otherwise each sentence would have been lengthier given your persistent offending and the fact that you had been sentenced in the Magistrate's Court for a drink-driving offence as recently as 9th June 2003. In light of the totality principle the individual sentences of imprisonment of 2 months imposed consecutively were not manifestly excessive. They were correct.

9. The appeal is dismissed.