

Judgment 7/2003

**Robin John Hutchinson
Court of Appeal
(Criminal Appeal 288)
9th January, 2003**

Importation of Class B drugs – application of sentencing guidelines – previous conviction

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 9th day of January, 2003 before Richard Charles Southwell, Q.C., presiding, Christopher Simon Courtenay Stephenson Clarke, Q.C., and Kenneth Stuart Rokison, Q. C.

THE LAW OFFICERS OF THE CROWN

V

ROBIN JOHN HUTCHINSON

Appellant

In the matter of the application by the Appellant for leave to appeal from the sentence imposed on him by the Royal Court on 28th May, 2002;

THE COURT, having heard Advocates A. M. Merrien and P. Robey for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto, GRANTED leave to appeal and ALLOWED the appeal to the extent that the sentence of nine years' imprisonment was set aside and replaced by a sentence of five and a half years' imprisonment, to run from 18th June, 2001.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

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THURSDAY 9TH JANUARY 2003

COURT OF APPEAL OF GUERNSEY

Before

Richard Charles Southwell, Esq., QC; presiding
Christopher Simon Courtenay Stephenson Clarke, Esq., QC
Kenneth Stuart Rokison, Esq., QC

ROBIN JOHN HUTCHINSON
(Criminal Appeal No. 288)

Judgment delivered by Clarke, JA.

CLARKE, JA: This is the judgment of the Court.

1. This is an Appeal against a sentence of 9 years' imprisonment imposed upon Robin John Hutchinson upon the first count of an Indictment, by which he was charged with having been concerned in the fraudulent evasion of the prohibition on the importation of Class B drugs.
2. On 4th March 2002 Mr Hutchinson changed his plea to one of guilty (he having originally pleaded not guilty), and he was acquitted on the other 2 counts on the Indictment. A verdict of guilty on the first count was recorded. On 27th May 2002 the Deputy Bailiff refused to allow Mr Hutchinson to change his plea. Mr Hutchinson appealed against that refusal and his conviction but on his behalf Advocate Merrien withdrew those appeals, leaving only his appeal against sentence.
3. The importation with which Mr Hutchinson was involved was of no less than 30.13 kilos of cannabis resin having an average street value in Guernsey of about £240,000. The cannabis had reached Guernsey via Herm, from where it was collected by Mr Hutchinson's co-defendant, Stephen Ronald Parker. Mr Parker brought the cannabis to a storeroom in Gategny Chambers, Bosq Lane, which was part of premises rented by Mr Hutchinson's girl friend, from which she ran a salon. Mr Hutchinson lived with her at a flat above the storeroom. Mr Hutchinson and Mr Parker were caught as a result of a prolonged investigation carried out by Guernsey Customs Officers. The details of what they saw and discovered, as set out in the Prosecution Outline, are not in dispute although the inferences that are to be drawn from them are.
4. On **Wednesday 6th June 2001** Mr Parker arrived in Guernsey. On that day Hutchinson and Parker were seen driving to Quayside in St Sampsons where Parker purchased a global positioning system hand held device ("GPS"). Subsequent examination revealed that coordinates had been fed into it at Hutchinson's house, apparently as a test of the device. Later in the day, at 3.34 p.m. Parker was seen to get out of Hutchinson's car opposite the Herm Trident Kiosk where he subsequently bought a ticket. He was then collected by Hutchinson. At 3.42 p.m. Parker was seen to get out of Hutchinson's Audi motorcar at the top of Cambridge Steps and Parker boarded the Herm ferry at 4.10 p.m.

5. Parker only stayed an hour and five minutes in Herm. He was seen to head towards the north of the island. At the northern end of Shell Beach he was seen to crouch. He was holding the GPS and writing something on a piece of paper. He appeared to be obtaining the coordinates of the area. When mitigating on behalf of Mr Parker Advocate Brehaut told the Court that the GPS had originally been intended for use to position where the drugs were to be dropped, but that in the event it was not used (indeed it was thereafter left in Guernsey) because Mr Parker was unable to work it. Mr Parker returned to Guernsey the same day and was seen to enter Glategny Chambers just before 7 p.m. and Mr Hutchinson to enter them 37 minutes later. Mr Parker walked away from the area of Glategny Chambers at 8.09 p.m. and returned to Weymouth that night.
6. Parker returned to Guernsey by air on **Tuesday 12th June** arriving at 1.30 p.m. He was seen carrying a rucksack with a mat and sleeping bag attached. Hutchinson met him at the Happy Landings Public House in his van which later stopped at Grut's in St Sampsons. Parker got out, bought a mobile telephone and then got back into the van. Later Hutchinson took Parker to the Herm ferry which he boarded at 5.10 p.m.
7. Parker stayed overnight at Herm. He pitched his tent at the campsite. He made a 3 day booking there the next day. On the night of 12th June Parker revisited the north easterly tip of the Island and was seen to go out of view over the headland down towards the beach.
8. On **Wednesday 13th June** Parker again visited the north eastern corner of the island at 10.15 a.m. He returned to Guernsey on the noon ferry and was seen at 2.20 p.m. coming out of Hutchinson's van with Hutchinson and his girlfriend and entering Glategny Chambers. Parker went back to Herm that night and returned to the campsite which he was seen to leave at 9.55 p.m. He was seen to return there at 10.25 the next morning.
9. Parker came back to Guernsey on **Thursday 14th June** and was seen at 7.40 p.m. in Hutchinson's van. He stayed the night in an hotel.
10. On **Friday 15th June** Parker arranged to stay another night in the hotel. He then travelled back to Herm where he arrived at 10.45 a.m. He then booked an additional 3 nights at the campsite. He returned to Guernsey on the next ferry where he stayed at the hotel until the morning of **Sunday 17th June** when he checked out.
11. On **Sunday 17th June** Parker checked out of his hotel at about 11.00 a.m. and went to Herm on the ferry from which he disembarked at 5.27 p.m. During the course of the evening he was seen going backwards and forwards between the north eastern end of Herm and the campsite and travelling on the pathway between Shell Beach and Belvoir Bay. He was seen at the north eastern end of Shell Beach at 5.45 p.m., 7.22 p.m. and 8.30 p.m., carrying a bag with him on the latter occasion.
12. In the early hours of **Monday 18th June** at 12.54 a.m. someone was seen at the north eastern tip of the beach and the sound of an outboard motor was heard. A person was seen to move from the beach and head towards the dunes. A person of Parker's size and appearance, but not carrying anything, was seen to pass near the Customs Officers position heading in the direction of Belvoir Bay. Advocate Brehaut was to explain to the Royal Court on behalf of Parker that he had come to collect the drugs in the hours of darkness but, in the event, returned to collect them in the early morning because, hearing an outboard motor, he thought that it belonged to the Customs and that they might be watching his movements. At 7.28 a.m. on the Monday Parker was seen to leave the camp site, carrying nothing with him, and to head towards the north eastern corner of the Island which he reached at 7.45 a.m. He disappeared out of the sight of Customs Officers. When he reappeared at 7.59 a.m. he had a rucksack with him. He later left the campsite with the rucksack and returned to Guernsey on the ferry from which he was seen to disembark at 9.26 a.m. He went to Glategny Chambers where he was seen to enter the building at 9.30

a.m. At 9.38 a.m. Mr Hutchinson's van was seen to pull up outside the premises and he got out. At 9.45 Customs Officers, bearing a search warrant, entered the premises and found Parker and Hutchinson standing in the doorway to the storeroom. When they entered the storeroom they found the drugs concealed in boxes placed under a worktop at the corner of the room. Parker's empty rucksack was found in the same room. The GPS that Parker had purchased on 6th June was later found in Hutchinson's van. The mobile telephone of Mr Parker was obtained from him when he was arrested; that of Mr Hutchinson was found in his van. Examination showed that the two of them had exchanged SIM cards so that Mr Hutchinson's SIM card was in Mr Parker's telephone and vice versa. Mr Hutchinson told the Customs Officers that this was done because Mr Parker had difficulty in remembering numbers. The records of the mobile telephones of Hutchinson and Parker revealed that a high level of telephonic contact was made between the two telephones in the days and, later, the hours, leading up to the importation of the drugs into Guernsey. Thus there were a number of communications or attempted communications between the two telephones on Friday and Saturday 15th and 16th June. At 11.03 a.m. on Sunday 17th June, a few minutes after Parker checked out of his hotel there was a 56 second telephone call from Parker's telephone to that of Hutchinson. At 1.01 a.m. on Monday 18th June, just after a man believed to be Parker was seen at Shell Beach a 21 second call was made from Parker's telephone to that of Hutchinson. At 7.47 a.m. another call was made from Parker's telephone to Hutchinson's lasting 110 seconds. This was at the very time when Parker was walking to the area from which he recovered the drugs. At 9.02 a.m., which was a minute before Parker was seen to board the ferry to Herm another call was made from Parker's telephone to Hutchinson's. At 9.32 a.m. and 9.36 a.m. further calls were made from Parker's telephone to Hutchinson's lasting 8 and 10 seconds respectively.

13. When Advocate Merrien came to mitigate on behalf of Mr Hutchinson his main submission was that Mr. Hutchinson's role in the importation of the drugs was a minor one in that the drugs were not bought by him and were not for him to distribute. When the Deputy Bailiff asked Advocate Merrien what Mr Hutchinson's role was, Advocate Merrien said that he was instructed that Mr Parker:

“did inform him at a late date of what was going on, and after that date he should have stepped back and said: *“I wish nothing to do with this”*, but in fact he did give Mr Parker various lifts, that is the extent to which he accepts his role was”.

14. The Court was not told what was the date when Mr Hutchinson learnt what was going on. Nor was any explanation given to the Court as to the content and purpose of the telephone calls that took place at and around the time when Parker was picking up the drugs and getting on the ferry from Herm. In his submissions to us Advocate Merrien told us that Mr Hutchinson only accepted that he learnt that Mr Parker was engaged in drug trafficking at a meal that he had with him on the evening of Thursday 14th June 2001 and that his involvement in the importation was limited to driving Mr Parker to the ferry to Herm on a couple occasions after that. On his instructions Mr Hutchinson was not aware that Parker would arrive at Gategny Chambers on Monday 18th June, did not expect him to do so, and was shocked to discover that he had arrived there. On his instructions the telephone calls were not related to the drug importation.
15. In his first interview with the Customs Officers on 18th June, Mr Hutchinson had said that on that Monday one of his employees had answered his (i.e. Mr Hutchinson's) mobile phone when Mr Hutchinson was at Jeffrey's service station. Mr Parker had asked if Mr Hutchinson could call in to see him. When he arrived at the salon Mr Parker had said that he had something for him (which Mr Parker described as “puff”) and asked if he was interested. Mr Parker, as he learnt, had put a package in a box. Mr Hutchinson told him to put it back in the rucksack and leave – at which point the Customs Officers had come in. When interviewed the next day Mr Hutchinson said that he had no idea why Mr Parker wanted a GPS. He said that a person doing some work at his house knew about GPS devices and helped Parker understand how it worked. Mr Hutchinson said he had no idea

why Mr Parker wanted to buy a mobile telephone. The receipt for that telephone was found in his van.

16. In the event the Royal Court sentenced both Mr Parker and Mr Hutchinson to 9 years' imprisonment but upon different bases. In Mr Parker's case the Court took a starting point of 12 years, and allowed a ¼ discount for a plea. The Court fixed the discount at that amount on the basis that Mr Parker had little alternative but to plead. In Mr Hutchinson's case the Court increased the starting point from 12 to 13½ years because he had been convicted of a drug trafficking offence, but allowed a discount of 1/3rd because the evidence against him was by no means as overwhelming as in the case of Mr Parker and by his plea he had saved a lengthy trial. The Court concluded that Mr Hutchinson's role in the importation was equal to that of Mr Parker and it fixed the starting points that it did on that basis. In reaching its conclusion the Court bore in mind the association between the two defendants prior to 18th June 2001 and most importantly from 6th June and 12th June and the number and destination of the telephone calls to and from each other's telephones. The Court made it clear that it would apply the guidelines that were in place prior to the case of Richards and Others (18th April, 2002)
17. Mr Parker appealed to this Court. This Court, having regard to the case of Barron (9th January, 2002) decided that an appropriate starting point in Mr Parker's case was 10 years. It also decided that, although, viewed in isolation, a discount of 1/3rd in Mr Parker's case would seem generous, any difference in the strength of the prosecution cases against Parker and Hutchinson was insubstantial, a finding that itself might be thought generous to Mr. Parker. Accordingly it decided that the appropriate discount was one that would result in a sentence of 7 years.
18. In the light of that decision, Mr Hutchinson would, in our judgement have a legitimate sense of grievance if the starting point taken in his case exceeded one of 10 years, even if his involvement in the importation is regarded as equal to that of Mr Parker. It was not, in our judgment right to increase the starting point, as the Royal Court appears to have done, solely on account of the fact that Mr Hutchinson had been sentenced to a term of imprisonment of 14 months for a drug trafficking offence involving 1.9 kilos of cannabis committed in 1994. A previous conviction (or convictions) for a drug trafficking offence (or offences) may cast light on the role played by the defendant in the offence with which he is currently charged; and will, in any event, mean that he is not entitled to the mitigation which would or be available if he was a man of good character. But, if the starting point properly reflects the involvement of the defendant in the offence, a further loading of the starting point (prior to any mitigation) will involve penalising the defendant more than once for the offence for which he has previously been sentenced.
19. We, further, accept the submission of Advocate Merrien that Mr Hutchinson's role in the importation was less than that of Mr Parker. In particular Mr Hutchinson is not shown to have had any link between either the supplier or the intended distributor of the drugs, whereas Mr Parker was in contact with what were probably French suppliers and with those who were to distribute the drugs in Guernsey. Further, Mr Hutchinson did not bring the drugs into either Herm or Guernsey.
20. We do not, however, accept the submission of Advocate Merrien that Mr Hutchinson had so limited a role that a starting point of 5 or 6 years would be justified. In our judgment the Royal Court was, and this Court is, entitled, having regard to the totality of the indisputable evidence, to regard as wholly implausible the claim that Mr Hutchinson's involvement in the importation consisted of nothing more than taking Mr Parker to the Herm ferry on a couple of occasions after 14th June 2001.
21. The number and timings of the communications between Mr Parker and Mr Hutchinson are such that it is impossible to suppose that they were unrelated to the importation of the drugs. The idea that these may have been social calls is fanciful; they must have been

made for the purpose of making arrangements to further the plan to bring this very large quantity of cannabis from Herm to Guernsey. The Royal Court was entitled to reach the conclusion, as it did, that it was not by coincidence but by arrangement that these drugs ended up at Gategny Chambers.

22. In our judgment the appropriate starting point, having regard to the difference in involvement between Mr Parker and Mr Hutchinson was one of 8 years. The appropriate discount, taking into account the guilty plea, in the light of the strength of the evidence against him, and the fact that he was not of good character but had a previous drug trafficking conviction was one of 5½ years. Accordingly we grant leave to appeal and allow the appeal so as to substitute for the sentence of 9 years from 18th June 2001 a sentence of 5½ years from the same date.