

Judgment 25/2003

**Michael Alexander Shakespeare
V Law Officers of the Crown
Court of Appeal
(Criminal Division 291)
8th July, 2003**

Importation of Class A drugs – conviction – evidence of co-accused – adequacy of directions as to corroboration – whether evidence was intrinsically credible – whether sentence manifestly excessive.

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 8th day of July, 2003 before Christopher Simon Courtenay Stephenson Clarke, Q.C., Presiding, David Arthur John Vaughan, C.B.E., Q. C., and Patrick Stewart Hodge, Q. C.

THE LAW OFFICERS OF THE CROWN

V

MICHAEL ALEXANDER SHAKESPEARE

Appellant

In the appeal of the Appellant from the conviction imposed on him by the Royal Court on 9th October, 2002, and on his application for leave to appeal from the sentences imposed on him on 22nd October, 2002;

THE COURT, having heard Advocates M. A. Torode and G. D. McKerrell for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto and

1. DISMISSED the appeal against conviction and
2. REFUSED leave to appeal against sentence.

K. H. TOUGH
Registrar of the Court of Appeal

IN THE COURT OF APPEAL OF GUERNSEY

Michael Alexander Shakespeare

(Criminal Appeal No 291)

Judgment of the Court delivered by Patrick S. Hodge QC

1. This is the judgment of the Court. Michael Alexander Shakespeare (“the Applicant”) was convicted by the Royal Court of Guernsey on 9th October 2002 of two offences both involving his being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods contrary to section 77(1)(b) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972, as amended.
2. The first offence involved the importation of diamorphine and the second offence involved the importation of cocaine, both contrary to the prohibition on importation imposed by section 2(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended.
3. The Applicant was charged in relation to both offences together with Pauline Ann Malin Cleland (“Mrs Cleland”), on whose person the drugs were detected on 8 April 2002. By the time of the Applicant’s trial, Mrs Cleland had pleaded guilty to the charges of importation of the diamorphine and the cocaine. Mrs Cleland gave evidence on behalf of the prosecution at the Appellant’s trial.
4. On 22 October 2002 the Royal Court of Guernsey sentenced the Applicant to eleven years’ imprisonment on each count, the sentences to be served concurrently.
5. The Applicant seeks leave to appeal against conviction and sentence.

The appeal against conviction

6. The Applicant seeks leave to appeal against conviction on the ground that it was unreasonable or cannot be supported having regard to the evidence. He advances two reasons for this submission. First, he argues that the Lieutenant Bailiff failed to direct the Jurats with sufficient particularity that unless they found that Mrs Cleland’s evidence was intrinsically credible on the matters in issue, no amount of corroboration could justify a finding of guilt. Secondly, he argues that, in any event, the Jurats would have been obviously and palpably wrong to have found Mrs Cleland intrinsically credible.
7. In support of the first ground of appeal, Advocate Torode referred us to a dictum of Lord Morris of Borth-y-Gest in *Director of Public Prosecutions v Hester* [1973] AC 296, 315 that:

The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence

is sufficient and satisfactory and credible: and corroborative evidence will only fill its role if it is itself completely credible evidence.

8. Advocate Torode also referred us to *Boardman v Director of Public Prosecutions* [1975] AC 421, in which Lord Hailsham of Marylebone stated (at p.455):

What I said in *Reg. v Kilbourne* was not that to give or require corroboration a witness must be believed without doubt. What I said, and what I meant, was that unless a witness's evidence was intrinsically credible he could neither afford corroboration nor be thought to require it. In such cases, the witness's evidence is rejected before the question of corroboration arises. Of course, a conviction in such a case can sometimes result if, notwithstanding the unreliable testimony, the independent evidence is strong enough. But this is because the independent evidence has proved the case independently of the unreliable witness, not because the unreliable witness is corroborated.

9. Advocate Torode submitted that the Lieutenant Bailiff had failed to give an adequate direction to the Jurats that they required to be satisfied that Mrs Cleland was an inherently credible witness before they went on to consider whether her evidence was corroborated in so far as it incriminated the Applicant.

10. In relation to the second ground of appeal, he criticised Mrs Cleland's evidence for certain inconsistencies which, he submitted, showed that she had embellished her evidence at the trial in order to portray the Applicant in the worst possible light. He contrasted certain things which she stated in evidence to the court with what she had said in her interviews with Customs officers on 8 and 9 April after her detention and in a signed witness statement taken on 9 April. In particular, he drew our attention to the following:

(a) Mrs Cleland stated in evidence that the Applicant had shared crack cocaine with her and her partner when he visited them at about Christmas 2001, although she had not made that allegation during her extensive interviews with Customs officers immediately after her detention;

(b) She had suggested in her evidence at trial that it should be inferred that the Applicant was co-operating with her supplier, Dee, to get him to put pressure on her and her family over her debts for the supply of drugs so that she would act as a courier for the Applicant, but on cross-examination she denied that she intended such an inference to be drawn;

(c) She had embellished her account of a visit to Birmingham airport on 21 March in her evidence to the court, stating that her supplier, Dee, was the driver when she had not identified the driver in her interview and had stated in her witness statement that the car had been driven by a black man who was unknown to her;

(d) She also mentioned that there was a black girl in the car on the trip to the airport on 21 March while she had not mentioned that in her interviews or in her written statement;

(e) Her account of the trip to Birmingham airport on 21 March was not credible as she suggested that she and the others were to travel over 30 minutes by car to the airport, then return to her home to collect the drugs to be transported before returning to the airport to fly to Guernsey;

(f) She also gave evidence of a visit from the Applicant in the week before 1 April when he persuaded her to act as a courier on 1 April but had not mentioned that visit in either her interviews or her written statement;

(g) She implied in her evidence at the trial that the Applicant had considered hitting her when she refused to go with him to the airport on 1 April although she had inconsistently acknowledged that she was not scared of him;

(h) She gave evidence on cross-examination that Dee had threatened her husband and daughter after her refusal to carry drugs into Guernsey on 1 April when reminded of her

statement to that effect in her first interview, although she did not mention it in her written statement or in her evidence in chief; and

(i) Her evidence as to how her husband knew of her intention to carry drugs into Guernsey on 8 April was inconsistent as she said in evidence that she told him while in her written statement she had said that he observed what she was doing, shook his head and walked out of the room.

These inconsistencies, Advocate Torode submitted, showed her as a wholly unreliable witness. She was a Class A drug abuser who had difficulty in remembering what was going on. By contrast, the Applicant had given a coherent account of his movements and had been supported by the evidence of Lisa Manyon.

11. For the Crown, Advocate McKerrell accepted that the dictum of Lord Morris of Borth-y-Gest was a correct statement of the law of Guernsey: the evidence to be corroborated must itself be satisfactory and credible before it can be corroborated by other evidence. See the decision of this court in *Plevin* (28 January 1977).
12. Advocate McKerrell submitted that the Crown in opening its case made it clear to the Jurats that they must treat Mrs Cleland's evidence with caution and that they should consider it with the utmost care. He referred us to directions which the Lieutenant Bailiff gave, to which we will shortly refer, and submitted that those directions could have left the Jurats in no doubt that they first had to decide whether Mrs Cleland was a credible witness before considering whether her evidence was in fact corroborated. He pointed out that there had not been a submission of no case to answer, which he would have expected if Mrs Cleland had been demonstrably an unreliable and incredible witness.
13. He submitted that Mrs Cleland's evidence was credible and that the Jurats had accepted it as such. There was, he submitted, ample corroboration of her account in independent evidence. That independent evidence could be used to test her credibility. When she gave her account in her interviews and written statement she did not know that the Crown would obtain evidence of the flight bookings which would strongly support her account. Her interviews had taken place immediately after her arrest. Her account of events in the interviews, written statement and in evidence at the trial had been broadly consistent apart from a gap in her recollection in evidence (which she corrected) when she thought that the events on 21 March had occurred on 27 March. She had taken care to state that she did not invite the court to infer that the Applicant was acting in concert with her supplier, Dee. She explained that she was aware that her co-operation would result in a reduced sentence but said that she was motivated by a wish to protect others, such as the young girls in prison in Guernsey, from being used as couriers.
14. He concluded that the Lieutenant Bailiff had properly directed the Jurats and that they, having been so directed, were entitled to accept Mrs Cleland's evidence. The verdict was reasonable and was supported by the evidence. It could not be said to have been obviously and palpably wrong. In any event, by reference to the proviso in section 25(1) of the Court of Appeal (Guernsey) Law 1961, which states that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred, he submitted that the Court should uphold the convictions.
15. In order to test these submissions it is necessary to look at the directions given to the Jurats and the evidence led at the trial.

The first ground of appeal

16. *The Lieutenant Bailiff's directions:* While the requirement of a special warning about the dangers of relying on the uncorroborated evidence of an accomplice has been abolished in England by the Criminal Justice and Public Order Act 1994 and in Scotland a Full Bench has held that there is no general rule that a warning should be given that an accomplice's evidence is suspect (*Docherty v H M Advocate* 1987 JC 81), it remained the law of Guernsey at the time of the Applicant's trial that such a warning should be given to Jurats. See the judgments of the Court of Appeal in *Lester* (2 June 1975), *Marshman* (12 December 1975) *Rodney* (22 September 1999) and *Holliday* (17 January 2000). Since then the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law 2002 has abolished the requirement that the Bailiff give a warning to the Jurats about convicting an accused on the uncorroborated evidence of an alleged accomplice.

17. The Lieutenant Bailiff gave such a warning. He stated:

"The principal evidence on which the Prosecution relies in respect of the charges for which Mr Shakespeare stands trial is indeed that of Mrs Cleland. As far as this case is concerned she is an accomplice. Accomplices are always treated as suspect witnesses, as they may have their own purposes to serve, the more so when they are still awaiting sentence. There are powerful and obvious inducements for Mrs Cleland to ingratiate herself with the Prosecution and with this Court, so that she might receive a lesser sentence of imprisonment than she might otherwise have done. It is therefore right that I should give you a firm direction at this early stage of my summing-up so that you can bear it in mind throughout your consideration of Mrs Cleland's evidence and the evidence generally. I must warn you that it would be dangerous for you to convict on the evidence of this accomplice if it is not corroborated. If having paid due heed to that warning, the force of which is increased in this case because of the fact that Mrs Cleland has not yet been sentenced for her acknowledged involvement in the crime, so if, having paid regard to that warning as enforced, you may proceed to convict on her evidence despite it being uncorroborated, if you are convinced of the guilt of the Defendant. But as I have said, you must treat her evidence with great caution."

Later on, in the context of a discussion of the relationship between her evidence at trial and her earlier interviews, the Lieutenant Bailiff stated:

Your duty is to assess the evidence of Mrs Cleland as you have heard it; was it or was it not reliable, what do you believe of her evidence?"

The Lieutenant Bailiff gave these directions after he had already directed the Jurats that it was *'vitally important in this case'* that they should form *"their own judgment about the witnesses and which evidence is reliable and which is not"*.

The Lieutenant Bailiff also stressed the importance of Mrs Cleland's evidence to the Crown, stating:

"The prosecution case is basically that the evidence of Mrs Cleland is, taken in the round, despite some inconsistencies, credible and reliable, and there is clear independent evidence supporting that story, there are areas of corroboration and particularly with regard to the flights both for herself and for the Defendant, and the number of times and dates that they were changed."

In our opinion these directions gave the Jurats clear and sufficient guidance. They informed the Jurats (i) that they required to reach a view on whether a witness, and particularly Mrs Cleland, was reliable, (ii) that they needed to exercise great care in relation to Mrs Cleland's evidence and (iii) that there was a real danger in convicting the Applicant without corroboration for Mrs Cleland's evidence. We observe also that the Lieutenant Bailiff took pains to remind the Jurats of the inconsistencies between Mrs Cleland's evidence at trial and her statements at the earlier interviews and in her written statement of 9 April. In the circumstances we are satisfied that the Lieutenant Bailiff did not misdirect the Jurats.

The second ground of appeal

18. *Mrs Cleland's evidence:* Mrs Cleland's evidence was that the Applicant had for several years been a friend of her son, Lee Bell. Mrs Cleland had used drugs for many years and in the last three years had used heroin. She gave evidence of being in debt to a drug supplier called Dee. She said that the Applicant approached her in about Christmas 2001 with a tentative proposal that she take drugs into Guernsey for him. She refused. He raised the issue again in March and she agreed to do so, travelling with him to Birmingham airport to do so. There was some confusion as to the date in March. She initially suggested in her evidence to the court that it was 26 or 27 March but eventually said that it was 21 March and that it was a Thursday. 21 March 2002 was a Thursday. She and the Applicant were driven to the airport on 21 March by Dee, who was a black man, and a black woman accompanied them. On reaching the airport, she changed her mind and refused to go to Guernsey. Thereafter on about 31 March it was decided that she should go on 1 April, but when the Applicant arrived at her daughter's house, she again refused to go. Later that week, however, she agreed to go after being put under pressure by the drug supplier, Dee. The Appellant provided her with the drugs which she hid in her bra and she and the Applicant were taken by car to the airport by a blonde, petite woman in her late twenties. At the airport she exchanged her ticket for another in her maiden name, Malin. She said that the Applicant told her to go to his niece's house and that he wrote her address in her notebook. The niece was called Karen and the address was 43 Courtil Ash, Grande Bouet, St Peter Port. In his cross-examination, Advocate Torode emphasised the inconsistencies between her evidence in court on the one hand and her tape-recorded interviews and written witness statement made on the day following her arrest.
19. *The independent evidence:* There was substantial independent evidence which pointed to the Applicant's involvement in the drug importation. First, there was the evidence that, when the Applicant flew from Guernsey to Birmingham on 27 February 2002, Customs officials in Guernsey had (unknown to the Applicant) discovered in the Applicant's suitcase, hidden in or amongst his clothes, £5,845 in cash, including £4,000 in an envelope addressed to Mrs Cleland's son. Secondly, there was photographic evidence that the Applicant was at Birmingham Airport on 30 March near the airline desk in the company of a female with blond hair. Thirdly, there was evidence that a female with light blond hair who fitted the description of the woman seen with the Applicant purchased an air ticket from Birmingham to Guernsey on 30 March allegedly for her mother under the name of Mrs P Malin for travel on 1 April. Fourthly, there was evidence that the Applicant's return flight from Birmingham to Guernsey was initially booked for 20 March but was subsequently changed to 21 March and then to 1 April, after which the date of travel on the ticket could not be changed. Fifthly, there was evidence that, on 1 April, the travel date on the ticket for Mrs P Malin was changed to 8 April. This was the ticket which Mrs Cleland used on 8 April to travel to Guernsey. Sixthly, there was evidence that on 5 April a person telephoned to book a ticket for the Applicant to fly from Birmingham to Guernsey on 8 April. Seventhly, there was photographic evidence of a blonde woman leaving the car park at Birmingham airport in a dark coloured car on 8 April in which the Applicant had travelled with one other person to the airport. Eighthly, there was evidence that both the Applicant and Mrs Cleland (under the name "Mrs P Malin") flew on flight BE 513 from Birmingham to Guernsey on 8 April. Ninthly, there was evidence that when detained at Guernsey Airport on 8 April Mrs Cleland was carrying a notebook which contained an entry which referred to Karen Marsh and an address – 43 Courtil Ash, Grande Bouet, St Peter Port. Karen Marsh was the occupier of premises at that address. Tenthly, there was evidence that on the evening of 8 April Customs officers and police officers entered 43, Courtil Ash, Grande Bouet, St Peter Port. There they

discovered the bags which the Applicant had brought into Guernsey that day and at about 8.25 pm that evening the Applicant was arrested when he arrived at those premises. There was also documentary evidence of mail addressed to the Applicant at that address. None of this evidence was contested.

20. In his evidence the Applicant stated that he worked as a disc jockey and as an upholsterer when in England and also as a labourer for Mark Hearn, among others, in Guernsey. His explanation for the money which he had taken from Guernsey to England in February was that he had saved £3,000 from work and had won about £2,000 at cards. He said that he wanted to go to Australia to visit his girlfriend, Michelle, but he did not arrange the trip while in England. He gave about £4,000 of the money which he brought to England to his mother for safe-keeping. He changed his flight to Guernsey from 20 March to 21 March because he would have missed the flight and he missed the flight on 21 March because he was partying. He accepted that he and Mrs Cleland had gone to Birmingham airport on 21 March in the company of a black man called David and his girlfriend called Beverley. He accepted that his girlfriend, Lisa Manyon, and he had been to Birmingham airport on 30 March and that she had bought a ticket for Mrs Cleland. He explained that Mrs Cleland was the mother of his friend, Lee Bell, that she was a drug user and that it was she who wanted to go to Guernsey. He helped her because she was his friend's mother. He said that he missed the flight on 1 April because of a break down on the motorway when his cousin and others in another car had a blow out and he had to remain with them to allow them to use his AA membership. He decided to remain in England another week as his girlfriend's birthday was on 6 April.
21. He suggested that Mrs Cleland had instructed that her ticket be purchased in the name of "P Malin". He could not explain why his girlfriend should have told the ticket clerk that P Malin was her mother. He gave Mrs Cleland his address in Guernsey by telephone on about 1 April. He gave evidence that he did not know that she intended to carry drugs until they were travelling by car to Birmingham airport on 8 April. When asked by Customs officers at Guernsey on 8 April how much money he had taken to England, he lied and said that he had taken £1,000. He lied on interview when he stated that he did not know Lee Bell. He also lied on interview when he said that he did not know anyone on the 8 April flight into Guernsey. He stated in evidence that on arrival in Guernsey he went to Karen Marsh's house at 43 Courtil Ash and that his niece and nephew lived there.
22. Lisa Manyon spoke of having met and formed a relationship with the Applicant in March 2002 and of going with the Applicant to Birmingham airport on about 30 March to purchase a ticket for Mrs Cleland after the Applicant handed her money to buy the ticket outside Mrs Cleland's house on that date. She was not asked why she used the name "P Malin" for Mrs Cleland nor why she told the ticket desk agent that she was buying a ticket for her mother. She gave evidence that she had been informed that there had been a breakdown on the motorway on 1 April and that the Applicant had missed his flight, although her recollection as to the early hour of his departure would have left ample time to get to the airport, notwithstanding the breakdown. She was pleased that he was staying in England for her birthday on 6 April. She drove the Applicant and Mrs Cleland to the airport on 8 April. She recalled that the Applicant had ordered Mrs Cleland out of the car on arriving at the airport, that he appeared to be angry but that he had declined to tell her what was the matter.
23. Against this background, we are not persuaded that the inconsistencies between Mrs Cleland's evidence at trial and her statements in her interviews or in her written statement, on which the Applicant founds, undermine her credibility and reliability. In particular, Advocate Torode emphasised her account of the trip to Birmingham airport on 21 March. But we consider that the Applicant's own evidence supports her account of that trip. He spoke of a

black man, David, being the driver and of his girlfriend, Beverley, accompanying him. Mrs Cleland suggested that the driver was Dee. We cannot on the evidence say whether David was Dee. But we are not persuaded that Mrs Cleland's reluctance in her written statement to identify the driver as her supplier, who had threatened her and her family, seriously calls her reliability into question.

24. What is striking, as Advocate McKerrell submitted, is the amount of independent evidence which was available to the Jurats to support Mrs Cleland's evidence if the Jurats accepted her account as broadly accurate.
25. This court has not had the benefit of seeing the witnesses and assessing their demeanour. The Jurats did.
26. This court can set aside the Applicant's conviction under this (second) ground of appeal only if satisfied that the verdict is unreasonable or cannot be supported having regard to the evidence. See the Court of Appeal (Guernsey) Law 1961, section 25(1). We are far from being so satisfied.

The appeal against sentence

27. Advocate Torode submitted that the sentence of 11 years' imprisonment was manifestly excessive. He did not take issue with the starting point of twelve years taking account of the dual importation of 54.6 grammes of heroin and 53.5 grammes of cocaine.
28. He submitted however that the four mitigating factors which had been placed before the court merited a greater discount than the one year which the court applied. The mitigating factors were the following. First, the Applicant had shortened the length of the trial by accepting much of the evidence in the form of written statements. Secondly, he relied on the terms of the probation report which suggested among other things that there was a low risk that he would harm others. Thirdly, his previous criminal record was not serious nor was it drug-related. Fourthly, as the probation report mentioned, the Applicant had four children with whom he maintained contact.
29. We are not satisfied that the sentence is manifestly excessive. While the Applicant merits credit for accepting the written statements of evidence, we note that he sought to explain away that evidence with an account of events which the Jurats cannot have believed. Secondly, the probation report identified a significant risk of re-offending. Thirdly, while we recognise that he does not have convictions for the possession of illegal drugs, or possession of such drugs with intent to supply, he cannot be regarded as being of good character. Finally, while it is often tragic that a parent is separated from his or her children by imprisonment, the separation results from the parent's illegal actings.

Conclusion

30. In all the circumstances we refuse leave to appeal.