

Judgment 52/2003

**Howard Roy Coleman
v Law Officers of the Crown
Court of Appeal
(Criminal Appeal 302)
18th December, 2003**

Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988 – application for leave to appeal from conviction before Court of Alderney – driving motor vehicle after consuming excess alcohol – the verdict was supported by the evidence and was not obviously and palpably wrong.

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 18th day of December, 2003 before Richard Charles Southwell, Esq., QC Presiding, Peter David Smith Esq., QC and Patrick Stewart Hodge Esq., QC

THE LAW OFFICERS OF THE CROWN

V

HOWARD ROY COLEMAN

On the application of the Appellant for leave to appeal from his conviction by the Court of Alderney on 18th July, 2002, his appeal to the Royal Court having been dismissed on 11th March, 2003;

THE COURT, having heard Advocate A. M. Merrien for the Appellant and G. D. McKerrell for the Crown, thereon, GAVE JUDGMENT in the attached terms, REFUSED the application for leave to appeal and REFUSED the application for legal aid.

K. H. TOUGH
Registrar of the Court of Appeal

IN THE COURT OF APPEAL OF GUERNSEY

THE LAW OFFICERS OF THE CROWN

V.

HOWARD ROY COLEMAN

Hodge JA

1. This is an application for leave to appeal against the conviction of the Applicant by the Court of Alderney on 18 July 2002 of the offence of driving contrary to section 2(2) of the Road Traffic (Driving under the influence of Drink or Drugs) (Alderney) Law 1987.
2. On conviction, the Court of Alderney sentenced the Applicant to pay a fine of £500 or in default of payment of such a fine to 28 days imprisonment and disqualified him from holding or obtaining a driving licence in all categories for a period of 2 years.
3. The Applicant appealed to the Royal Court against his conviction and the Deputy Bailiff, sitting alone, dismissed the appeal on 11 March 2003. We have jurisdiction in terms of section 7 of the Magistrate's Court (Criminal Appeals) (Guernsey) Law 1988 – see *Law Officers v Diment* 1993 16 GLJ 40.

Undisputed facts

4. The following facts are not disputed on behalf of the Applicant. He was the owner of the Volvo car registration number AY 1525. That car crashed into a wall at “Highways”, Les Mouriaux, Alderney on the night of 30-31 January 2002 between 11.30pm and 12.30 am. Mr Godfray, who resides at that address, having heard a thud but observed nothing when he looked outside, was alerted to the accident at some time after the accident occurred by the repeated sounding of the car horn. Mr Godfray saw a man who appeared to be injured lying across the front seats of the car and ran back to his house to ask his mother to telephone for an ambulance and the police. Mr Godfray returned outside and found the man in the car was sitting up. He formed the view that he was not seriously injured but was drunk. Mr Godfray helped the man out of the car. He went into the house to inform the emergency services that a helicopter was not required before returning to the car from where he observed the man walking down the hill towards the sea. About five minutes later, at about 12.33 am, the police arrived and went down the hill after the man. About two minutes thereafter the police found the Applicant staggering in a drunken state about 800 metres down the lane near La Picaterre. The Applicant had a cut on the right hand side of his forehead with some blood around the cut. The windscreen of the Volvo car had a crack in it at a point where a person's head may have hit it. When apprehended the Applicant said “OK you've got me, you've got me, I've been silly”.
5. At 1.25 am on 31 January 2002 a medical practitioner took two samples. One sample was analysed and was found to contain not less than 291 milligrams of alcohol in 100 millilitres of blood.

6. In his evidence, Mr Godfray gave a description of the man he had seen in the car and whom he helped out of the car in the following terms:
“...he is kind of middle aged, which to me anything between 40 and 50 I guess. A bit kind of rounded belly, fairly scruffily dressed, like working type clothes. At the time I thought he had a bit of a cheeky jolly face that reminded me of some-one else that I had known, that is probably why I remember his face. But a bit kind of red faced and jolly looking, medium sort of height, not tall or short, fairly stocky, greyish hair.”
7. The Applicant gave evidence at his trial. The Alderney Court therefore had the opportunity to compare him with Mr Godfray’s description. No suggestion was made to the Court that the Applicant, who was then aged 52, had an appearance which was materially different from that description.
8. The police conducted an interview with the Applicant at about 7 pm on 31 January 2002. PC Hanna said in evidence that she would not have conducted the interview if the Applicant had appeared unfit or still under the influence of alcohol. During the interview, which was tape-recorded, the Applicant twice admitted that he was the driver of the car. However the Applicant when giving evidence said that a passage in the recording, which was difficult to hear, sounded as if he had said “I don’t know who put it there”. “It” referred to the crashed Volvo car. The passage occurred at an early stage in the interview. Later in the interview, as I have said, the Applicant admitted on two occasions that he had been the driver of his car at the time of the accident.

The evidence upon which the Applicant relies

9. The Applicant at his trial gave evidence that he had injured his forehead on 28 January 2002. On 30 January 2002 he had driven his Volvo to Braye Street and had gone drinking in the Sea View Hotel which he left between 7 pm and 7.30 pm to walk home. After sleeping for about 2 hours he took a taxi to the Coronation Inn between 10 and 10.30 pm where he continued to drink until around midnight, when he was in a “pretty bad” condition. He set off just after midnight to walk home by the route which he usually took but fell over, grazing his knees, at the bottom of the Valley near Picaterre Farm where he was picked up by the police. He gave evidence that he had not driven the car since he left it in Braye Street at about 5 pm. He suggested that it took him two to three days to sober up, because his head ached for days.
10. Support for some of the Applicant’s account of events was given by Ian Edwards who had seen the Applicant drinking in the Sea View Hotel on 30 January 2002 and who left the hotel at 7.30 pm after the Applicant had left. He gave evidence that when he left the hotel he saw a Volvo car in Braye Road (not Braye Street) which he associated with the Applicant. Melanie Burland, a barmaid at the Coronation Inn, gave evidence that the Applicant left the hotel in a drunken state just after midnight on that night.

The Applicant’s Submissions

11. Advocate Merrien for the Applicant bases his application on two issues. First, he points out discrepancies in the evidence as to timing between Mr Godfray on the one hand and, on the other, Miss Burland and the police officers (PC Hanna and PC Callister). Secondly, he submits that there was an inconsistency in the Applicant’s evidence in the taped interview between on the one hand his acceptance that he was the driver and on the other the passage where it was suggested that he said that he did not know who had put the car there. He

submitted that as a result of this inconsistency which suggested that the Applicant was confused, the taped interview could not be relied on to support the conviction.

12. We deal with each issue in turn.
13. In relation to the first issue, we consider that Mr Godfray's estimates of the time when the accident occurred cannot be relied on as a precise indication of the time. He first estimated that the accident occurred between 11.00 pm and 11.30 pm but said that he could not say exactly. On cross-examination he suggested that the accident occurred between 11 pm and 12 am but that he was not taking account of the time. In his evidence he did not profess to have an accurate recollection of the time although he said that he had written in his diary that an accident happened and the police came. When asked on cross-examination what he had written in his diary he thought that he had said something like 11.45 pm but that he did not know exactly.
14. PC Hanna's evidence of timing, that she was alerted to the accident by phone from Guernsey Police Control Room at 12.25 am and that the police arrived at the scene of the crash at 12.33 am is consistent with the Applicant's evidence and that of Miss Burland that he left the Coronation Inn just after midnight. It is also broadly consistent with Mr Godfray's estimate that he heard the thud of the car crashing about half an hour before the police arrived.
15. In these circumstances we do not consider that Mr Godfray's uncertainty as to the precise timing of the accident undermines the prosecution case against the Applicant having regard to the undisputed facts, which we have summarised.
16. We can deal with the second issue shortly. Even if in the contested passage in the taped interview the Applicant suggested that he did not know who put the car where it was found, the Alderney Court was entitled to decide what weight was to be attached to that suggestion in the light of his repeated acceptance in the interview that he had driven the car. That acceptance, together with the undisputed facts, entitled the Alderney Court, who had the advantage of seeing the witnesses give evidence, to conclude that the Crown had proved their case against the Applicant beyond reasonable doubt.
17. We are satisfied that in convicting the Applicant the Alderney Court has not caused justice to miscarry. The verdict was supported by sufficient evidence. It is not obviously and palpably wrong. See *Law Officers of the Crown v Ogier and Le Noury* 1989 7 GLJ 8. We refuse leave to appeal.