Wayne Martin Brouard v Law Officers of the Crown **JUDGMENT**
Court of Appeal **52/2014**
11th December, 2014

Application for leave to appeal against convictions of 20th February of one account of indecent assault and one count of gross indecency with a child.

Approved Judgment
11.12.2014

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division - Appeal No. 456

11th December, 2014

BETWEEN: **WAYNE MARTIN BROUARD** **Appellant**

V

THE LAW OFFICERS OF THE CROWN **Respondent**

Before: Sir David Calvert-Smith, President
Jonathan Crow QC
& Robert Logan Martin QC

Advocate A M Merrien for the Applicant

Crown Advocate C Dunford for the Respondent

REDACTED TEXT:

Sir David Calvert-Smith, JA

THIS IS THE JUDGMENT OF THE COURT

1. This applicant applies for leave to appeal against his convictions on 20th February 2014 before Judge Finch and 10 jurats of one count of indecent assault and one count of gross indecency with a child.

2. The applicant maintains that in respect of both counts the convictions were unreasonable on the facts presented to the court and that in respect of Count 2, in addition, the evidence was so weak and unreliable that a conviction was unreasonable.

The History

3. [……..]

4. [……..]

The Grounds

5. The original Grounds, drafted by Advocate Green who represented the applicant at trial, complained of weaknesses in the evidence and the passage of time between the alleged assault and gross indecency and the first approach to the police of the complainant, and were in effect a repetition of the points made by him in his final speech to the Court.

   […….]

6. The applicant is now represented by Advocate Merrien. He in effect repeated the submissions of his predecessor.

The Law

7. Under the provisions of Article 25 of The Court of Appeal (Guernsey) Law 1961:
   "The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

   Cases decided since have refined the definition of "unreasonable". In *Ogier & le Noury Guernsey Court of Appeal 1989 No 27 (Criminal)* the court used the phrase "obviously and palpably wrong".

8. This Court must take into account, in cases tried by Judge and Jurats, that Jurats are,
   "..holders of judicial office and... far more experienced in the affairs of law and legal procedure than the normal juryman in the United Kingdom"
   Tilley v The Law Officers of the Crown 27th November 1973.

9. In addition this Court must always bear in mind when dealing with submissions based upon the weight of the evidence and the credibility of witnesses that it has not had the advantage of the lower court of seeing those witnesses and hearing them tested under cross-examination. *Taylor v Law Officers of the Crown (2007-08) GLR 207.*

Decision

10. We have examined the submissions and the relevant transcripts against that background.

11. So far as the possible inconsistencies are concerned, they are of the kind encountered in almost every case which depends on recollections rather than records. They are in short the "staple diet" of tribunals of fact, whether magistrates, jurats or jurors. There is nothing in them, either singly or together, such as to provoke the operation of Article 25. We note, in passing, that, in a case such as this, when the only evidence of fact before the court is that of the complainant, the defendant having elected not to give evidence, the Article 25 criteria

resemble a submission of no case to answer at the close of the prosecution case. No such submission was made in this case.

12. The passage of time – some 15 years in this case – is always a matter for anxious consideration. However, by the standards of many so-called "historical" cases the delay between complaint and trial is not excessive, and no submission was made to the Royal Court or to us that it was. In any event the law on this topic is clear. It is not the fact of the delay but its effect, if any, on the fairness of the proceedings which has to be considered – see R v RD [2013] EWCA Crim 1592 at paragraphs 13-14. In this case nothing has been put forward to explain how the passage of time may have affected the fairness of the trial beyond the matters already discussed. No complaint has been made, nor could it be, of the careful summing up on this issue.

13. Accordingly we conclude that there are no grounds for allowing this application

14. In respect of Article 37(3) of the Court of Appeal Guernsey Law 1961, we order that proviso (b) of that subsection shall apply so that no part of the time the applicant has so far spent in custody under his sentence be deducted from it.