



X v Law Officers of the Crown
Court of Appeal
24th July 2015

JUDGMENT
5/2017

Appeal against conviction for gross indecency and indecent assault.

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION – APPEAL NO. 462

24 July 2015

Before:

**Sir Hugh Bennett
George Bompas QC
Sir Michael Birt**

Between:

X

-v-

LAW OFFICERS OF THE CROWN

**Advocate A M Merrien appeared for the Applicant
Crown Advocate F Russell for the Respondent**

JUDGMENT (REDACTED)

BENNETT, JA

THIS IS THE JUDGMENT OF THE COURT

1. X (“the applicant”) seeks the leave of this court to appeal against his convictions on 27 November 2014 of 8 counts of gross indecency and indecent assault on his two children, C and D at his trial before Judge Russell Finch and 9 Jurats. The applicant was arraigned on an indictment charging 12 counts but 4 counts, namely counts 1, 4, 7 and 10 were the subject of not guilty verdicts by the Jurats on the direction of the judge at the close of the Crown's case. The counts on which the applicant was convicted were as follows. In respect of C, count 2 charged the applicant with gross indecency with a child between 1 August 2000 and 31 March

2002 at house Y the gross indecency being [REDACTED]. Count 3 charged the applicant with indecent assault between the same dates and at the same property, the indecent assault being that [REDACTED] in the toilet. Count 5 charged the applicant with indecent assault between the same dates and at the same property, the indecent assault being that he [REDACTED] for a short time. In respect of D, count 6 charged the applicant with gross indecency with a child between 1 August 2000 and 31 December 2002 at house Y, the gross indecency being that [REDACTED]. Count 8 charged the applicant with gross indecency with a child between the same dates and at the same place, the gross indecency being that the applicant [REDACTED]. Count 9 charged the applicant with gross indecency with a child between the same dates and at the same place, the gross indecency being that he [REDACTED]. Count 11 charged the applicant with indecent assault between the same dates and at the same place, the indecent assault being that he [REDACTED]. And finally, count 12 charged the applicant with indecent assault between the same dates and at the same place, the indecent assault being that he [REDACTED]. All counts were specimen counts that is to say the activity was alleged to have happened on more than one occasion within the time frame alleged.

2. The applicant pleaded not guilty to all counts. Both C and D gave oral evidence. C, by the time of the applicant's trial, was over 18 and D was 16 years old. Oral evidence was also given for the Crown by the children's mother, Z and her partner,. At the close of the Crown's case the indictment was revised to remove counts in respect of which the children had not given any evidence relating to the activity charged. In relation to count 5, the Crown made it clear that, in the light of C's evidence that, although the applicant had tried to [REDACTED] twice he had only succeeded on one occasion, count 5 should be treated as a specific and single occurrence. The applicant then gave evidence as did his parents. The applicant's evidence was that the abuse had never happened to either child and that, as he said at the very beginning of his evidence-in-chief about the allegations of abuse, "They're all completely untrue".
3. Counsel for the Crown and the applicant then addressed the court, and the judge summed-up the case to the Jurats, who then retired. The Jurats returned unanimous verdicts of guilty on all the remaining counts.
4. The applicant was sentenced to a total of 9 years 6 months imprisonment. On the charges relating to C he was sentenced to a term of 4 years and 6 months imprisonment on each count concurrent with each other. On the charges relating to D, he was similarly sentenced but the sentences are to run consecutively to the sentences in respect of C. Finally, he had pleaded guilty to a count in an earlier indictment of absconding on bail. He was released on bail in these criminal proceedings on 1 November 2012 but absconded and left the jurisdiction just before the date fixed for trial thus delaying the trial of these matters by some 2 years. He was

sentenced to a term of 6 months imprisonment consecutive to the above.

5. The applicant seeks this court's leave to appeal his convictions on two grounds namely that the decision of the Royal Court was obviously and palpably wrong and/or that the decision of the Royal Court was one which no reasonable tribunal properly directed could have reached. It is to be noted that in the grounds of appeal of 5 June 2015 and in Advocate Merrien's skeleton argument of 19 June 2015 there is no criticism whatsoever of the judge's summing-up to the Jurats.
6. The law to be applied on an application for leave to appeal a criminal conviction and in the appeal, if leave is granted, is to be found in sections 25 and 26 of the Court of Appeal (Guernsey) Law, 1961. Section 25(1) is materially different to section 2 (1) of the (English) Criminal Appeal Act, 1968. Section 25 (1) provides as follows:-

“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 judgement 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:

PROVIDED 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.”

7. The law as to the rationality of a decision of Jurats in a criminal case was recently considered and set out in Pinto and others v Law Officers of the Crown 2013 GLR 83 where Montgomery JA giving the judgment of this court, said at paras 22 to 24 inclusive, as follows:-

“The rationality of the decision of the Jurats

22. The submissions of the appellants on occasion failed to recognize the constraints that art. 25(1) of the Court of Appeal (Guernsey) Law 1961 imposes on this court. In *Aladesuru v R.* (1), Lord Tucker ([1956] A.C. at 54-55) observed that a statute (materially identical to the Guernsey Law) conferred a right only to “a limited appeal which precludes the court from reviewing the evidence and making its own evaluation thereof.” In *Att. Gen. v Edmond-O’Brien* (2) (2006 JLR 133, at para.2), Lord Hoffman reviewed art. 26(1) of the Court of Appeal (Jersey) Law 1961 (which is materially identical to the Guernsey art. 25(1)), quoted Lord Tucker’s

words with approval and emphasized that it was not the function of the Court of Appeal to say that the evidence of the accused should have been accepted.”

23. It is to be noted that although in *Edmond-O'Brien* Lord Hoffman referred to the possibility of legislative change or a more liberal interpretation of the statutory language being adopted (*ibid.*, at 141), no change has been made to either the laws of Jersey or Guernsey. In *Bhojwani v. Att Gen.* (3), Beloff, J.A. speaking for the Jersey court, but using language that is equally apposite to the Guernsey Court of Appeal, said:

“This Court has consistently and recently approached its role in a way which recognises the difference between the Jersey and English statute: *e.g. Hall v Att. Gen.*, 1995 JLR 102 (notably it has been observed that the ‘unsafe and unsatisfactory verdict’ is no part of Jersey Law) ... If the States wished to align Jersey to mainland law in this area, they could have done so. Our researches suggest that the issue of reform has never been seriously raised: the record shows that, even if it had been raised, it was rejected.”

24. Accordingly we consider it appropriate to follow the guidance given in *Taylor v Law Officers* (25) by Beloff, J.A. as to the approach of the Court of Appeal in Guernsey to grounds of appeal based upon the rationality of factual conclusions reached by Jurats. The guidance may be distilled into three principles:-

[1] The jurisdiction of this court is defined by the 1961 Law and the powers of Court are more limited than those enjoyed by the Court of Appeal (Criminal Division) in England and Wales which incorporates the concept of an “unsafe” verdict, and, by judicial gloss, that of a lurking doubt.

[2] Where an appeal is from the Verdict of Jurats which does not disclose the reasons upon which the verdict is based, “if the summing up is sound the court may well not be able to interfere unless the verdict is obviously wrong” (*Guest v. Law Officers* (6), as quoted from the transcript of January 9th, 2003). Furthermore, as Le Quesne, J.A. observed in *Tilley v. Law Officers* (26) (Guernsey C.A. Judgments 1964-1989, at 97) “... the Jurats are holders of judicial office and are far more experienced in the affairs of law and legal procedures than the normal juryman in the United Kingdom.” A challenge to their verdict as unreasonable is especially difficult to make good.

[3] In assessing the rightness or wrongness of the verdict, the Court of

Appeal must at all times bear in mind that the function of fact-finding has been left to the lower court and that, particularly where credibility is in issue, the lower court, notoriously, has the advantage, denied to the Court of Appeal, of seeing and hearing the witnesses including, most importantly, the defendant.”

8. Furthermore, we have been reminded of para 22 of the judgment of the Judicial Committee of the Privy Council (delivered by Lord Hoffmann) in Attorney General for Jersey v Edmond O'Brien [2006] JLR 133 as follows:-

“22 Their Lordships were told that no other case had been found since the establishment of the Court of Appeal in Jersey in which a verdict of the jurors had been set aside solely on this ground. In *Aladesuru v The Queen* [1956] AC 49, 54-55 Lord Tucker, speaking of a Nigerian statute in similar terms to the Jersey Law, said that it conferred only the right to – “a limited appeal which precludes the court from reviewing the evidence and making its own evaluation thereof” and added that the cases in England in which a verdict had been set aside “as one which no reasonable tribunal could have found” were exceptional. As Lord Goddard CJ said in *R v Hopkins-Husson* (1949) 34 Cr App R 47, 49:

“the fact that some members or all the members of [this] court think that they themselves would have returned a different verdict is ... no ground for refusing to accept the verdict of the jury, which is the constitutional method of trial in this country. If there is evidence to go to the jury, and there has been no misdirection, and it cannot be said that the verdict is one which a reasonable jury could not arrive at, this court will not set aside the verdict of guilty which has been found by the jury.”

9. Before we examine the submissions made to us on behalf of the applicant and the Crown we should set out the broad nature of the Crown's case and that of the applicant, at trial. The two children were those of the applicant and Z. C described in her evidence how she got on well with her father before he and her mother split up, indeed she said she loved him. She said that it seemed about a year between them splitting up and her last seeing the applicant. After the split she saw the applicant on a Saturday and once during the week as well, that is to say on Wednesdays. She would see him at his parents' house, house Y. D did not remember his parents splitting up because he was so young. He had contact with the applicant at his parents' house Y on Saturdays and Wednesdays and continued to do so after C stopped seeing the applicant.
10. C said she believed she saw the applicant for about a year after the split. It seemed a long time

to her. She believed the last time she saw the applicant was when she was 4 to 5 years old. She was in infant school at that time. She said she could not honestly remember the dates but “ I just remember what happened”. She described how the incidents of [REDACTED] and of the applicant touching her [REDACTED] took place in the toilet downstairs. She would go into the toilet and stand on the right hand side. He would [REDACTED]. The applicant's trousers and underwear were down by his ankles. She would come out of the toilet after 4 or 5 minutes. The applicant would stay in the toilet and C could then hear heavy breathing and a sort of a groan. She never saw him “come”. These incidents never happened when her grandparents were in the house. The door of the toilet, she believed, opened outwards which the applicant half closed and there was room for what she described to happen.

11. On other occasions when she went to the toilet the applicant would take off her trousers or pull up her dress, kneel in front of her, and [REDACTED] for 4 to 5 minutes.
12. In the lounge (on the first floor of the house) she remembered an occasion when she and the applicant were watching a film about sharks. C was lying cuddled up to the applicant who was wearing big joggers. He had an erection. He pulled his joggers and pants down and asked C to [REDACTED] which she did. The incident only happened for a few seconds. The applicant asked her if she would do that again and she said she would not. “It never happened again”.
13. Further, C said that once or twice the applicant took her and D upstairs, undressed them both completely and took pictures of them lying on the bed.
14. C told the court that she used to cry and scream a lot in the car on the way to see the applicant for contact. She would be very upset. She spoke one day to the mother of X and asked her why the applicant made her come with him to the toilet. The mother of X told her to stop making up lies and was never to say that again. The applicant had told C that it was normal and everyone did it. He told her that if she told anyone she would be in big trouble, that he would take her away from her mother and she would never be able to see her anymore. She believed him. She was not aware of the applicant doing anything to D. It was put to C squarely at the end of her cross-examination that the applicant was going to say that none of this had happened, to which she answered that she was speaking the truth.
15. D described how he would be taken by the applicant upstairs, undressed and have pictures taken of him by the applicant. C would be with him for 50% of the time when this happened. D said he was abused upstairs in the applicant's bedroom. The applicant would try to make D [REDACTED] in which the applicant succeeded. He would force [REDACTED] and grab D by his arms. The incidents would last some 20 seconds and then be repeated. There were also occasions when the applicant tried to [REDACTED]. They would both be naked and lying on

the bed, D face down. He could feel [REDACTED] and it was painful. In the toilet downstairs it was different to what happened upstairs. In the toilet, whose door he said opened inwards, the applicant made D [REDACTED]. The room was not big enough for both the applicant and D to stand side by side, so D stood behind the applicant and [REDACTED]. Sometimes he and the applicant would be naked.

16. D said that he remembered Boxing Day “more than I can remember any other day”. It was the first day C did not go with him for contact with the applicant. He was abused by the applicant in the bedroom. C had refused to go for contact. D described how C on going for contact would cry and scream and refuse to get out of the car.
17. D said that the abuse by the applicant started when he was about 3 years old and continued for “ a good year and a half, two years”. He thought that the last day he went for contact was Boxing Day when C did not go with him, which would have been when he was about 4 to 5 years old.
18. The applicant's evidence was that the allegations of abuse made by both children were untrue. None of them had ever happened. Before the split with Z, which he said occurred on 3 August 2001, his relationship with both children was good. The split came about because he was having an affair with Linda [NAME CHANGED]. He split with Linda on 11 July 2002 and Mary [NAME CHANGED] became his partner. After 3 August 2001 he went to live with Linda and after he split with Linda he lived with his parents for no more than a month before living with Mary. He said there was an issue with Z about the children seeing Linda. He stopped seeing C in about mid-November or early December 2001 and D at about Christmas 2002. He denied that he saw the children on Wednesdays. On Saturdays the children would be dropped off at house Y. He never saw the children there on his own. His parents would always be present. He did not have any contact with D on Boxing Day. He had never taken naked photos of either child or of both of them together. He completely denied any sexual abuse of either child whether at his parents' house, Linda’s or Mary's house.
19. The core submission of Crown Advocate McKerrell to the court in his closing speech to the Royal Court was that although criticisms of the evidence of both C and D could be made in relation to location, timings and dates, the fundamentals of what they were saying about the applicant's abuse of them was unshaken. The fundamental issue was whether they were telling the truth. The experience of both giving evidence must have been painful, distressing and hurtful and that they would not go through such an experience unless they were endeavouring to tell the truth. He accepted that the most difficult part of the Crown's case in relation to C was the issue of timing. Z had accepted that the date of separation was on 3 August 2001 and that

D's access had stopped around the middle of December which left a narrow window of opportunity for the applicant to commit the offences and especially so if C did not always attend for contact on Saturdays. But he submitted that the court could feel confident that C was still a witness of truth. So far as D was concerned, he went through his evidence and suggested that the assaults on D when the applicant [REDACTED] were "quite violent". D's resistance was thwarted by the applicant holding his arms. He submitted that the detailed and graphic account given by D was not something that he could have made up. Finally he submitted that C and D were being asked to remember events in 2014 that happened 12 to 14 years previously and the fact that the "stories are not perfect" might help the court to determine that they were in fact telling the truth.

20. Advocate Merrien, in his closing speech, built the applicant's case around the inconsistencies in the evidence. They were such that the court could not accept the evidence of the children and the applicant should be acquitted on all counts. His principal points were as follows. So far as timescale is concerned with C, she said that the incidents had been going on for about a year. But when the evidence of the adults was looked at, the separation between Z and the applicant did not take place until August 2001 and contact was over by Christmas of that year. Accordingly there was a period of perhaps 12 to 14 weeks in which these incidents could have occurred. Within that period there were some weeks when C did not go to contact and C generally in her evidence referred to the incidents happening on Saturdays. The original indictment contained 12 counts which were specimen counts alleging therefore that the incidents had occurred on more than one occasion. Accordingly the Crown was alleging that there were at least 24 incidents in this time frame. Thus the allegations must be false for it was not possible for there to be so many incidents in such a short time frame. Further, having regard to the original interviews, the evidence of the parents and the issues with the timings no incidents as alleged by the Crown took place. In 2002 C was interviewed by the police when she made no disclosure (p. 25 H).
21. D said that his contact continued to December 2002 and that C was present more often than not. This did not fit in with C's contact ceasing at the end of 2001. D had made reference to conduct at the home of Linda in his evidence. But in an earlier statement he had made reference to the conduct being at Mary's house. Having seen "Linda" at the bathing pool and having been told that Linda was the applicant's girl friend at the time, he then told the court that the conduct had happened at Linda's house. D said that he had mixed up Mary and Linda but this was not true. He had also mixed up their addresses.
22. As to the downstairs toilet at house Y, C had said that the door opened outwards when the adult evidence was that it opened inwards. C had said that when she was seated on the toilet the

applicant was crouched in front of her with his knees almost touching hers. Such could not have happened with the door open at 45 degrees. The toilet was simply not big enough. D described a toilet going straight ahead on going through the door which did not match the evidence of the adults nor what was visible on a site visit by the court. D also said there was another toilet in the bathroom but the adult evidence was that there was no toilet in the bathroom.

23. The children were incorrect in terms of the location of the bedroom used by the applicant when he was living at his parents' home and that for some of the time he was not living there but with his partner.
24. Advocate Merrien further submitted to the Jurats that there had been a campaign by Z and her partner and that there must have been discussion in the family. Thus there was a risk of collusion.
25. Following counsel's speeches the judge summed-up the case to the Jurats and as already stated the Jurats returned verdicts of guilty on the counts before them.
26. Advocate Merrien in his submissions contends that there was no evidence to support count 8 and the applicant should not therefore have been convicted under this count. Count 8 was a specific count of an allegation that the applicant had caused [REDACTED]. But a careful reading of D's evidence in the transcript does not reveal any evidence on this matter. As D was the only person giving evidence in relation to such an allegation, then if he in fact gave no such evidence there was no evidence upon which the applicant could be convicted on that count. The applicant contends that there was no such evidence and he should not therefore have been convicted on that count.
27. It is unfortunate that this was not brought to the attention of the court by either the Crown Advocate or by counsel on behalf of the applicant at the close of the Crown's case or before the judge began his summing-up. Indeed it is to be noted that this contention is not in the applicant's grounds of appeal to this court.
28. However, Crown Advocate Russell, who represents the Crown before us but did not appear before the Royal Court, concedes in para 8 of her submissions that D gave no evidence to support this count. At the close of the Crown's case it seems that both counsel believed that D had given evidence to support the count – see pp. 232 D and 239 F - as did the judge. However, both Advocate Merrien and Crown Advocate Russell have carefully read the transcript of D's evidence and can find no reference to D giving any evidence which might support this count. We, too, have read the transcript of D's evidence and agree that he gave no evidence in this regard.

29. Advocate Merrien before us submitted that the inconsistencies in both children's evidence, upon which he had addressed the Royal Court, were such that the verdicts of guilty in respect of all the counts (count 8 having now fallen away) were wrong and that the proper conclusion must be that none of the incidents alleged by either child took place. His core submission was that the children's evidence was shot through with inconsistencies that their credibility was so much in issue that the verdicts of guilty were wrong. As to timescales Advocate Merrien expanded on his submissions. There were a very limited number of weeks between August and December 2001 and very limited occasions within that timescale for the abuse alleged to have taken place. The number of possible occasions would have been reduced by either C or the applicant being ill, or by C not going for contact at all. The Crown's case at trial had been one of numerous occasions of abuse but now that there were only 3 counts in relation to C, the Crown's case had changed – see para 10 of the submissions of Crown Advocate Russell. So far as D was concerned, Advocate Merrien submitted that D had said that C was present more often than not, but that, as his contact continued to December 2002, that would not fit in with the number of weeks of contact already identified between C and the applicant. D was, furthermore, very imprecise about C's exact whereabouts whilst the applicant abused him – see 79H, and of the whereabouts of his grandparents – see 103C.
30. In relation to the toilet, C said the door opened outwards whereas D said it opened inwards. There is no dispute that in fact it opened inwards. The Jurats visited the house and could see that for themselves. The evidence was that the door had always opened inwards. Accordingly C was wrong on that detail. Furthermore, he submitted that, with the door opening inwards there would have been no room for the alleged abuse in the toilet to have taken place if the door had been open at an angle of 45 degrees as described by C. D had described a toilet straight ahead on going through the door and that there was a toilet in what was described as the bathroom. On both matters the evidence of the adults was that he was wrong.
31. Further, in relation to D, Advocate Merrien submitted that D made reference to conduct at the home of one of the applicant's partners (see para 21 above). The name he gave in a statement was not the name he gave in court. Knowing that the matter was coming to court he made no reference to his error. D, it was submitted, was not in error and was giving false evidence.
32. In conclusion Advocate Merrien submitted that if the Royal Court had gone wrong we had the ability to say so. The evidence of the children was so strikingly at odds with that of the adults that their credibility was affected to such an extent that the verdicts of the Jurats were wrong.
33. Crown Advocate Russell reminded us that the Jurats had to consider, in relation to C, 3 counts that is to say counts 2 and 3 (specimen counts) and count 5 (activity on one occasion only). C's

evidence as to how for how long the activity had continued was understandably vague given her age at the time the events were said to have occurred – see pp. 6 F and 22 F. At page 52 H, when it was put to her by Advocate Merrien that in her evidence she had reduced the number of alleged incidents to a very limited number of occasions and during a period of much less than a year, she said “..I can't give you how many times and I can't give you how long it was. It felt like forever.” C agreed in cross-examination that the relevant time period was between August 2001 and Christmas 2001 and that she recalled the incidents happening principally on Saturdays. So far as count 2 was concerned, C said that it happened a few times, 3 or 4 times. So, Crown Advocate Russell submitted that, even allowing for occasions when C did not go for contact, the period of time, some 14 to 16 weeks, was ample opportunity for the incidents to have happened with the frequency C described.

34. The Crown further submitted to us that the fact that C made no disclosure in 2002 is not inconsistent with her evidence. Her explanation for making no disclosure was that she was scared to tell the police anything (p.26B). That explanation could be assessed by the Jurats next to C's reasons for not telling Z, her mother, namely that the applicant told her that if she told anyone he would be in big trouble and that he would take her away from her mother and C would not be able to see her anymore (p.18D). So the reliability and credibility of C's evidence was a matter for the Jurats to assess in the light of the above.
35. As far as D is concerned and his evidence in relation to C being present 50% of the time, it was the evidence of C, of Z and of her partner that C's contact with the applicant ceased shortly before Christmas 2001. D's contact with the applicant ceased in December 2002. Thus the Crown accept that there was a period of about a year during which D went for contact with the applicant to house Y without C. However, D said that she was not in the same room, but in the house, and that he was on his own with the applicant when the incidents of alleged abuse took place, with the exception of when the applicant took pictures of C and himself in the bedroom (p.86F to 87A). This was confirmed by C. D appeared to be imprecise about C's , and indeed his grandparents', exact whereabouts – see pp. 79H and 103C. Nevertheless, it is the submission of Crown Advocate Russell that it was open to the Jurats to conclude that the fact that D was mistaken about the number of times C was present was not a matter of critical importance as to the core truth of what D was saying.
36. As to D's evidence that the applicant had engaged in similar activity with him at another location, the address of a former partner of the applicant, Crown Advocate Russell submitted that this was not the subject of any of the charges. His inconsistencies as to the location and as to his naming the person incorrectly were put to him in cross-examination. Further it was suggested to D in his cross-examination that he had changed his evidence in respect of the

geography of the bedrooms, where the abuse was said to have happened, to coincide with the evidence given by C and the changes were the result of discussion with other family members. Thus, she said that the applicant's case was that there had been collusion between the children and that they had fabricated their accounts.

37. Crown Advocate Russell submitted that the evidence of collusion and thus of fabrication might have been stronger had the evidence of each child been more exactly similar or consistent with the other. For example, C's and D's evidence about which way the door of the toilet opened in house Y was inconsistent. D's mistake as to whether there was a toilet in the bathroom at house Y and his precise description of the toilet could be explained as much by inaccurate observation as false memory. But in either case, she submitted, it counter-indicated fabrication. Further, the Jurats were entitled to regard the mistake as to the applicant's girl friend and the geography of the house as immaterial or of little significance to the issue before the court, namely whether the acts complained of took place at all. The issue of whether the toilet was large enough for the acts complained of to have taken place was particularly a matter for the Jurats who actually were taken to the house and could see the toilet for themselves.
38. Her broad submission was that all the inconsistencies were before the Jurats, they had seen the house and the toilet for themselves, they had seen the children and the adults give evidence, and it was a matter for them to decide who they believed and any issues as to collusion between C and D.
39. In our judgment, the matters set out by this court in Pinto at para 25 of its judgment are particularly apt in the instant case. The Jurats saw and heard all the evidence, including that of C and D and the applicant. The credibility of C and D, and of the applicant, were at the heart of the matter. We, of course, have not seen and heard the evidence. The Jurats had visited the property and seen the toilet and were thus able to make up their own minds as to whether there was room for the alleged abuse to take place. Jurats are holders of judicial office and regularly sit to hear criminal cases and thus may be said to have considerable experience in assessing the evidence and hence credibility of witnesses. Thus a challenge to their verdicts is unreasonable and especially difficult to make good. If the summing-up is sound, and in the instant case there is no criticism made at all of the judge's summing-up, the court may well not be able to interfere unless the verdict is obviously wrong.
40. We remind ourselves of what this court said in its judgment in Barnes v Law Officers of the Crown 2003-04 GLR 521 at para 39 as follows:-

“39. As to the inconsistencies and discrepancies to which Mr. Ferbrache referred us, we do not consider it necessary for us to deal with them in detail. Inconsistencies and

discrepancies in the evidence adduced in support of a prosecution are commonplace. If an appeal against conviction had to be allowed in every case in which there were inconsistencies and discrepancies, precious few offenders would remain convicted. Clearly, there can be cases in which the prosecution evidence is so riddled with inconsistencies and discrepancies that the appellate court feels compelled to intervene. But that is not the situation here. All of the matters raised by Mr. Ferbrache were put before the Jurats for their consideration and they were given an adequate direction by the Deputy Bailiff. It is apparent that neither individually nor cumulatively were they sufficient to raise a reasonable doubt. This was the conclusion the Jurats were well entitled to reach and there is no basis on which this court could contemplate repudiating it.”

41. Having carefully considered the applicant's and the Crown's submissions in this case we cannot say that the verdicts of the Jurats were obviously wrong. The Jurats had to take into account the totality of the evidence which they heard, assess the inconsistencies in D's and C's evidence, and then ask themselves the question in relation to each count “were they satisfied so that they were sure that C, in relation to the counts to which she gave evidence, and that D, in relation to the counts to which he gave evidence, were telling the truth that the incidents which they allege took place did actually take place?” In the end it was a matter of whether they were sure that C and D were telling the truth, despite the inconsistencies, the significance of which they had to evaluate. By their verdicts they were sure. In our judgment the inconsistencies in the evidence of C and D are not such as to render any of the verdicts unreasonable or incapable of being supported having regard to the evidence.
42. In the circumstances we give leave to appeal against count 8, allow the appeal and quash the conviction. Otherwise we refuse leave to appeal.
43. Before leaving this case we would like to draw attention to the citation of authority to this court. In our view where an authority has been reported in the Guernsey Law Reports (“GLR”) it is that report which must be cited. In the instant appeal the copy of the report of Pinto placed before us differs in paras 23 to 25 inclusive from paras 22 to 24 inclusive in the GLR. In particular, from the copy placed before us it appears that in para 25 the court distilled its guidance into “four” principles; whereas in the GLR para 24 the court distils its guidance into “three” principles. We are completely satisfied that the substance of the court's judgment is identical if slightly differently expressed. However, this does emphasise that (a) where a case is reported in the GLR it is that report which should be cited and (b) where counsel are in possession of an unreported copy of a case they must check whether it has been reported in the GLR.

