JERSEY / JUDGMENT

Batho v AG [2003] JCA 129 (18 July 2003)

[2003] JCA 129

COURT
COURT OF APPEAL

BEFORE
R. C. Southwell, Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C.; and
D. A. J. Vaughan, Esq., C. B. E., Q. C.
Steven Maurice BATHO
-v-
The Attorney General
Application for leave to appeal against conviction
before the Inferior Number, en police correctionnelle
on 19th February, 2003,

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

COURT OF APPEAL
th
July, 2003.

Before:
R. C. Southwell, Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C.; and
D. A. J. Vaughan, Esq., C. B. E., Q. C.
Steven Maurice BATHO
-v-
The Attorney General
Application for leave to appeal against conviction
before the Inferior Number, en police correctionnelle on 19th February, 2003,

following a not guilty plea to:
1 count of:
possession of a controlled drug with intent
to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey)

Law, 1978:
count 1: cannabis.
1 count of:
possession of a controlled drug , contrary
to Article 6(1) of the Misuse of Drugs (Jersey)

Law, 1978:
count 2: ecstasy.
The Application for leave to appeal
placed directly before the plenary Court without first being submitted to a
Single Judge for consideration and determination.
Advocate D. M. Cadin for the Appellant;
Advocate R. Juste on behalf of Attorney
General.

JUDGMENT

THE PRESIDENT: 1. In April 2002 Mr Steven Maurice Batho had been employed as the Sexton of St Saviour's Parish Church for about seven years, having been employed for five years before that as gravedigger. His responsibilities as Sexton included maintenance of the churchyard, digging graves and maintenance of the church. His work was centred in a wooden shed in the corner of the graveyard. In the shed were kept the tools and machines he needed for his work. The shed was also his office and the place in which he rested. The shed contained, in addition to the tools and machines, a desk, a refrigerator and a microwave oven. There was also another shed for the storage of petrol. 2. In the early hours of 30 April 2002 a policeman PC Jayson Lee went to the churchyard of St Saviour's with a police dog (called Harry). PC Lee searched the grounds and found

- two biscuit tins sealed with white tape and placed behind a gravestone containing bars of cannabis resin.
- A baby food tin under a pile of branches and twigs in which he found eight pieces of cannabis resin.
- A biscuit tin underneath the headstone of a grave containing bars of cannabis resin. 3. At 8.10am that morning Mr Batho was arrested on arrival at the churchyard on suspicion of possessing cannabis resin with intent to supply. He was searched and £664.15 in cash was found on him (of which £400 was in a money bag separate from his wallet), as well as other items (some clear polythene bags and two mobile phones). 4. At about 9am the same morning a further search by the police of the churchyard was carried out. There were found in this search

(1) by PC de Ste George

- a sweet box containing five ecstasy tablets discovered inside the separate petrol shed
- in the dust bag of a leaf blowing machine, just outside the main shed, two bars of cannabis resin
- a baby food tin underneath a pile of branches and twigs containing two kinder eggs with pieces of cannabis resin in them, and a glasses case with a set of scales in it

(2) by Police Sergeant Francis Bois, a biscuit tin buried in a lined hole covered by a concrete slab with plant pots on the slab: the tin contained £610 in cash in bank moneybags.

(3) by PC Lee with the dog Harry, a large sack near the main shed under which was a bar of cannabis and a polythene bag containing pieces of cannabis. 5. The total weight of all the cannabis recovered from the churchyard was 8,405.11 grams, i.e. over 8.4 kilograms, with a street value in Jersey of over £49,000. 6. A right palm print of Mr Batho was found on the outside of a section of cling film wrapped round one of the cannabis resin bars, and a fingerprint of his left forefinger was found on the outside of a plastic money bag which PS

Bois had discovered. 7. Mr Batho was charged with having the cannabis in his possession with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law 1978, and with simple possession of the five ecstasy tablets. 8. The right thumb print of Mr Marc Fourdan was also found on some black tape wrapped round a cannabis resin bar found in a tin behind a gravestone by PC Lee. Mr Fourdan was also charged with possession of cannabis with intent to supply but the proceedings against him were discontinued. There were several other finger prints but the person or persons concerned were not identified by the police. 9. The trial took place before the Bailiff and Jurats Rumfitt and Georgelin on 17, 18 and 19 February 2003. Mr Batho was convicted on both counts, and was sentenced on 7 April 2003. He gave notice of an application for leave to appeal against his conviction on 15 April 2003. This application has been placed directly before the full Court as directed by the Greffier Substitute, Mr F B H Sergeant, on 4 June 2003. On 5 June 2003 the applicant submitted an amended notice of application with amended grounds prepared by his advocate, Advocate David Cadin . 10. The evidence concerning the discovery of the cannabis, the ecstasy and the money was the subject of an agreed statement of facts. 11. The evidence for the prosecution can be summarised as follows 12. DC Derek Buesnel produced photographs of the tins, their contents, the places where they were found, and the shed and churchyard. He also gave evidence concerning earlier secret surveillance of the churchyard. The tapes recording the surveillance were reviewed by DC Buesnel , who completed brief logs of his review. The tapes were subsequently lost and thought to have been destroyed by mistake. From his review logs and his cross-examination it was clear that men other than Mr Batho worked in the churchyard, and that men (including those working in the churchyard) and women (sometimes with children) entered the shed from time to time as well as Batho . 13. Mr Alan Palmer said in a written statement that he had worked as a manual worker for the Parish of St Saviour since 1987. He covered for other employees when they were away, and he helped on occasions in digging graves. He had a set of keys to the Sexton's shed which also gave him access to other sheds, the Church and the churchyard gates. He normally went into the main shed only if the weather was bad or to have a cup of tea, and normally Batho would be with him in the shed unless Batho was away. He did not see visitors to Batho in the churchyard except people connected with Batho's work as Sexton, and Batho's wife and children. 14. Mr Gary Buesnel said in a written statement that he had known Batho for 30 years. Before Christmas he had lent Batho £500 to help with presents. In January 2002 he lent Batho £1,500 to help Batho buy a Harley Davidson motorcycle for about £4,000. Thus the total he lent was £2,000. Batho had paid back about £1,000. 15. DC Paul Kennea produced the transcripts of the interviews of Batho on 30 April 2002 and subsequently. In the interviews Batho stated that he was "responsible for pretty much all the land owned by the church", and "pretty much anything, anything that needs doing round the church, is down to me". Out of his wages of £350 per week, after all outgoings for his wife, his two children and himself had been paid, he had about £50-60 for himself. He had two motorcycles, a Kawasaki for which he paid £250, and a Harley Davidson which he bought in January 2002 for £4,000 in cash. He had borrowed £2,000 from a friend, Gary Buesnel , and had paid back most of this. Of the total of £664.15 in cash on him when arrested, £400 was

set aside for service of the Harley motorcycle, and £200 for repaying his friend: this money had been saved by him from his wages over a period. 16. Keys to the main shed were held by Roy Newton, Alan Palmer, the Parish Foreman, the Rector and Batho . 17. Batho said that he did not recognise any of the tins in which cannabis resin had been found by the police. Neither his DNA nor his fingerprints would be found on any of the cannabis packages. He denied that tape like that on the packages was in his shed. He said that had not hidden any of the packages or tins, and had no knowledge of them. 18. Of the total of £4,000 paid for the Harley motorcycle, £2,000 had come from Gary Buesnel , £1,000 from the sale of a Rebel motorcycle, and the remaining £1,000 was money he had saved over a period. His explanation as to the repayment to Gary Buesnel of £1,800 between January 2002 and 30 April 2002 (with the last £200 in his pocket when arrested) was that this (and the last £1,000 paid for the Harley) came from money he saved to a small extent and from cheap clothing from the United Kingdom which he and his wife sold in Jersey. About £500-£600 worth had been sold by Batho and his wife in 2002. He denied that the money found in the tin in the hole under the concrete slab was his. 19. Batho said that he had a loan from an insurance company for £1,000 none of which had been repaid. He had borrowed £4,000 some years before to pay for a Range Rover of which he said £1,000 was still outstanding. 20. Batho said that the glasses case found with a set of scales inside looked much like his own, which was a Jane Jamieson case as was this one. 21. Batho said that he knew nothing of the tin with money in found buried in the hole and covered with a concrete slab which was near the door of the main shed. At a later interview he said that he had known that the hole was there, but he had not dug it. 22. Mr Roy Newton was 63 years old and had been working for the Parish of St Saviour for 38 years. He cut the grass at the church with a strimmer (and sometimes a mower) between early April and late October, working 5 days a week from about 7.30am to 2pm. During the winter months he worked from St Saviour's Parish Depot on road cleaning and general parish maintenance. Usually he used a strimmer and a mower brought up by the day from the Depot. He and Mr Palmer did not use the leaf-blowing machine. He went to the main shed in the churchyard if he needed a tool, and he had keys to the shed. If Mr Batho was away on holiday or otherwise he and Mr Palmer would use the shed in Mr Batho's absence. The keys to the shed were normally left on the side, so that others could have had access to the shed. Stone masons worked from time to time in the churchyard, and sometimes went to the main shed. Other Parish employees went sometimes to work in the churchyard, and would go to the shed. His fingerprints had not been taken by the police. The hours of work of himself and the others were different from those of Batho . 23. A submission of no case to answer was made at the close of the prosecution case. The primary ground for this submission was that in view of the evidence that many people came to the graveyard, and in particular into the main shed, the case against Batho that he knowingly had possession of the cannabis with intent was too weak to be allowed to proceed. The only direct evidence was of a print on the cling film round some of the cannabis and another print on a moneybag, plus the fact that Batho was one of the persons working in the churchyard and used the shed. Against Mr Fourdan there was similar evidence of a print, but the charges had been dropped. The evidence against Batho was not sufficient, it was

submitted, to establish guilt beyond reasonable doubt. This submission was rejected. 24. Mr Batho gave evidence himself. In chief he denied knowledge or possession of the drugs or the hidden money. He stated that he had cling film in the shed and used it for wrapping food. He had bank bags in the shed to keep his money change in. He sought to explain his family's finances by reference to his and his wife's bank accounts, and the fact, he stated, that any other money they had was put in their kitchen drawer. He said that he had wanted to buy a Harley motorcycle for his fortieth birthday in June 2001, but at that stage he had saved too little, about £1,500. He bought a Harley in mid-March 2002 for £4,000. He explained that many people came to the graveyard, whether parish employees, stone masons or casual visitors. The shed was usually either open or the key was left at the side. There was no means of preventing access to the churchyard 24 hours a day. 25. In cross-examination he accepted that it was part of his job to check that the masons had done what they were supposed to do, but not the quality of their work. He had carefully to maintain appropriate paper work concerning activities in the churchyard and submit this to the parish hall every Friday. He had worked in the churchyard for 5 years as gravedigger and then 7 years as Sexton. He was surprised, therefore, that he had not known that drugs and money had been hidden in eight places in the churchyard. 26. There was lengthy and somewhat opaque cross-examination about whether he knew of the two holes near the shed, in one of which the money was hidden. It appears that in the end he accepted that he had known of the digging of that hole, but that because it had been dug some years before he had assumed that it had fallen in. His initial answers to the police in interview indicated that he did not know about the hole. Subsequently he had said in a later interview that he had not previously told the police about the hole (of which he had known) because the police had found a lot of money in the hole. Batho accepted, in answer to questions from the Bailiff (page 48 of the transcript), that he deliberately misled the police about the hole because he thought it would not look good for him to be connected with the digging of holes around the graveyard. 27. Batho could not account for his prints being on the cling film wrapped round a piece of cannabis and on a money bag in the hole, except to say that "those items", i.e. the cling film and the money bag, must have been taken from the shed where they were kept for use. He accepted that he had suggested to the police in interview that he had not known that there was cling film "in my shed", and that at the trial his answer was different. 28. He accepted that on his version he was an innocent man and someone else was using his workplace "to run a drugs racket". 29. There was lengthy cross-examination about Batho's family finances, and how he had been able to pay for the Harley motorcycle. He explained that, in addition to the loans totalling £2,000 from Gary Buesnel , his sister-in-law had lent them £1,500. Also his wife worked from home as a seamstress, and had for a time worked for Pound World at £90 per week. He accepted that he had failed to tell the police in interview about Pound World, or about the loan from his sister-in-law, and had told the police that he did not owe any money to anyone in the family, but he did not accept that he had intentionally tried to mislead the police. 30. Mrs Batho also gave evidence. She explained about her work for Pound World, and about the loan of £1,500 from her sister in January 2002, producing a letter confirming this from her sister. She had been paying back £100 per month from her

bank account directly into her sister's bank account. She did not produce any bank statements. 31. T he evidence has been summarised at no little length because of, in particular, the first ground of appeal on which Advocate Cadin relies. Ground 1 32. This is a broad submission that the verdicts of guilty on both counts were unreasonable and could not be supported by the evidence. Mr Cadin recognised the difficulties involved in establishing such a ground of appeal. 33. Mr Cadin submitted that, at the highest, the evidence against Batho was sufficient only to found a suspicion that Batho might have been involved. He referred to Solicitor General -v- McGuffie

(1968) JJ 955 in which the Court of Appeal emphasised that mere suspicion, however grave, does not suffice to discharge the heavy burden of proof on the prosecution. 34. The matters on which Mr Cadin relied were these: (i) There was no evidence as to when the drugs were placed in the graveyard. (ii) Many people apart from Batho had regular access to the main shed and the graveyard was open to the public 24 hours a day. The surveillance logs showed the extent to which other persons than Batho regularly used the shed, as did the evidence of Newton and Palmer. (iii) In relation to the two fingerprints of Batho, the right palm print on part of the cling-film round a cannabis bar and a left forefinger print on a money bag, there were several fingerprints found on the wrapping of the cannabis or the money bags but the police had failed to take fingerprints from others who came to the graveyard regularly and used the shed. The strength of the fingerprint evidence against Batho was much diminished by the police failure to investigate further the other fingerprints. The only other fingerprint that had been identified was that of Mr Fourdan , and the prosecution of Fourdan , though begun, had been discontinued for unexplained reasons. (iv) Though at first sight there appeared to be some unexplained sources of finance for the Batho family, the evidence of loans from Mr Gary Buesnel and Mrs Batho's sister dispelled the initial suspicions in this respect. 35. To a considerable extent this ground of appeal covered the same matters as the submission of no case to answer at the close of the prosecution case. In our judgment it fails for much the same reasons:- (i) Though others regularly used the shed and visited the graveyard, Batho, as the sexton, was the person in most continuous use of the shed and the most continuous presence in the graveyard. (ii) It requires a large stretch of imaginative faculties to conclude that the large amounts of cannabis could have been placed in concealment in the area round the shed without Batho being in any way involved, for example, the cannabis in the leaf blower bag immediately next to the shed, which machine was normally used only by Batho. (iii) The presence of the two fingerprints was not explained by Batho. The theory that his palm print could have been imprinted on a normal roll of cling-film and then be transferred when cling-film was used by someone other than Batho to wrap cannabis bars appeared to owe its origin to lawyer's speculation and not to be founded on any practical or scientific basis. 36. In our judgment there was ample evidence before the Jurats on which they could reasonably convict Batho. It was for the Jurats, who saw Batho being examined and cross-examined, to weigh up the evidence and to decide whether, as a whole, it enabled the prosecution to discharge its heavy burden of proof. It is not for this Court to second-guess

the Jurats in their conclusions on the facts, unless there was no sufficient basis for their verdict in relation to the cannabis. In our judgment that is not the position in this case. 37. Turning to the separate and lesser count of simple possession of ecstasy tablets, we have reached the same conclusion that there was evidence before the Jurats on which they could reasonably convict. Ground 2 38. Under this ground Mr Cadin submitted that the Bailiff had failed in his summing up to the Jurats to give a specific direction as to the fact that the evidence against Batho was circumstantial evidence and as to the caution they should exercise in evaluating that evidence. He drew particular attention to these points: (i) The need for a direction in relation to the several sets of fingerprints which were not Batho's prints and to the failure of the police and the prosecution to take any steps to identify whose fingerprints they were, or to eliminate other persons who went regularly to the graveyard. (ii) The need for a direction in relation to the evidence that Fourdan's fingerprints were found on the covering of a cannabis bar in a tin, the contents of which formed part of count 1 against Batho, and in respect of which Fourdan was arrested and charged, but the prosecution against him was subsequently discontinued. (iii) The need for a direction concerning the absence of a forensic link between the various lots of drugs found in the graveyard. (iv) The need for a direction concerning the surveillance of the shed in the graveyard and in particular the need to tell the Jurats to ignore the limited evidence of the surveillance (the tapes having been lost or destroyed) except in so far as that supported the defence case, especially as showing that many persons other than Batho had access to the shed. 39. Before final speeches, the Bailiff in the absence of the Jurats had the usual discussion with the Advocates concerning the directions he would give to the Jurats, bearing in mind that unlike jurors the Jurats are permanent and experienced judges of fact. Mr Cadin did not then raise with the Bailiff any point concerning the directions which he now says the Bailiff should have given. The Bailiff was ultimately responsible for giving appropriate directions. But Mr Cadin's decision not to raise these matters with the Bailiff may be taken as some indication that he then considered that these matters could adequately be dealt with without directions from the Bailiff. 40. Mr Cadin, in his closing speech to the Court, placed considerable emphasis on the circumstantial nature of the evidence against Batho. For example he said this: "There is nothing inherently wrong with circumstantial evidence, circumstantial evidence can have a cumulative effect, can point one way, but caution has to be exercised especially in this case." He went on to deal well and thoroughly with every aspect of the evidence. 41. It is true that the Bailiff did not in so many words repeat what Mr Cadin had said about the need for caution in the face of circumstantial evidence. But the Bailiff emphasised that with the Jurats it was not necessary to deal fully with the evidence, especially since the trial had been a short one, and that it was not necessary for the Bailiff to repeat the submissions from the advocates which the Jurats had just heard. But the Bailiff went on to deal briefly in some detail with the main elements of the evidence against Batho. 42. In the judgment of this Court it would have been superfluous, given the experience of the Jurats, to repeat on similar lines what Mr Cadin had set out so well in his speech concerning the circumstantial evidence Ground 3 43. Mr Cadin submitted that a miscarriage of justice

resulted from the Bailiff having reminded the Jurats in his summing about the prosecution case that Batho had misled the police in interviews about his knowledge of the hole in which money was found. 44. It was contended by the prosecution that, though Batho in his final police interview told the police that he had known of the existence of the hole, in his earlier police interviews Batho had failed to explain this to the police. There was a lengthy, repetitive cross-examination of Batho about this, in the course of which the Bailiff rightly complained that the questioning was unclear and the direction it was taking was equally unclear. But this part of the cross-examination ended with the Bailiff asking these questions of Batho: "Bailiff: But what's being put to you is that you deliberately misled the police about this hole because you thought it wouldn't look good.... Batho: I thought it might implicate mys

- that's for sure, yeah. Bailiff: And you accept that? Batho: Yes, sir." 45. The Bailiff dealt with this point fully and fairly in his summing-up and gave an appropriate Lucas direction. 46. The point had been raised by Mr Cadin with the Bailiff in the discussion before final speeches, when Mr Cadin himself asked for a Lucas direction. The Crown Advocate made it clear that he was going to say to the Jurats that the admission of misleading the police was a form of dishonesty and went to Batho's credibility as a witness. Accordingly the Bailiff agreed that he would give a Lucas direction in this regard. Mr Cadin dealt with this himself fully in his closing speech, in which he emphasised that the admission by Batho that he knew of the hole was volunteered by Batho. 47. The nub of Mr Cadin's complaint on this appeal seemed to be that the Bailiff had not also emphasised the voluntary nature of this admission by Batho. In our judgment the Bailiff gave a correct Lucas direction, and it was in no way incumbent on him to add the point on the voluntary nature of the admission which Mr Cadin had just emphasised so clearly. Ground 4 48. Mr Cadin contended that the Bailiff ought to have directed the Jurats in his summing up to approach each count separately and not to take a finding on one count automatically into account when determining guilt on the other count. 49. There were only two counts before the Royal Court, the serious one relating to the cannabis, and the much less serious one concerning simple possession of some ecstasy tablets. The Jurats as experienced judges of fact did not need to be told that the two counts needed to be considered entirely separately. We have no reason to doubt that they did so consider each of the two counts. 50. In any event the Bailiff in his summing up at several points dealt with the two counts separately and Mr Cadin in his closing speech had emphasised the need to look at the ecstasy count separately. There is nothing in this ground of appeal. Ground 5 51. The complaint is that the Crown Advocate attempted to adduce an item of inadmissible evidence and did so in an inappropriate and prejudicial manner in front of the Jurats. 52. In the course of Batho's evidence it became apparent that his wife had been working, until shortly before he was arrested, with a company called Pound World. It also became apparent that he and his wife benefited from rent abatement. The Crown Advocate, during an adjournment, obtained a copy of Batho's rent abatement claim form on which he had declared that his wife was not earning. There was some discussion between the advocates, as a result of which Mr Cadin understood that Mr O'Connell would raise the

point with the Bailiff in the absence of the Jurats, whereas Mr O'Connell apparently did not have that understanding. 53. In the event Mr O'Connell tried to introduce the rent abatement form before the Jurats in cross-examining Batho, without first seeking a ruling from the Bailiff in the absence of the Jurats. Mr O'Connell got as far as asking the question: "Did you declare your wife's income on the rent abatement form?" before Mr Cadin objected, the Jurats went out of Court and the Bailiff was asked to rule. After argument the Bailiff ruled that the prejudice to Batho would outweigh the probative value of the evidence and Mr O'Connell was barred from pursuing this line of questioning. Wisely, the Bailiff did not address this point directly in his summing up and left it to be covered impliedly by a full and fair direction as to Batho's good character. 54. In our judgment this was clearly a mistake by Mr O'Connell. As a Jersey Advocate he ought to have appreciated that he needed to raise the matter first with the Bailiff, irrespective of whether he had given Mr Cadin to understand that he would be doing so. This was in our judgment a falling from Mr O'Connell's usual high standards. 55. But we are also satisfied that this one mistake did not cause any miscarriage of justice by itself, given the superficial reference which was made to the matter. We will return to it once we have considered Grounds 6 and 7 which are also directed to other aspects of Mr O'Connell's conduct of the trial. Ground 6 56. Mr Cadin contends that Mr O'Connell's cross-examination of Batho was improper because (i) it included inappropriate comments; (ii) it was argumentative; and (iii) it was oppressive. 57. We were referred to a number of passages in cross-examination in support of this ground of appeal. In some there were comments by Mr O'Connell which on a strict and ideal view should not have been made. Cross-examination should consist of questions and answers and not comments. But all transcripts of almost all trials contain some comments made even by the greatest of advocates. On occasions Mr O'Connell did pursue some of his questioning in a somewhat argumentative way. If he were to be condemned for this, there are few of the greatest advocates who would not equally have to be condemned. We have considered carefully whether any of the questioning was oppressive and we are entirely satisfied that it was not. The reality is that Mr Cadin is asking this Court to judge the cross-examination of Mr Batho by an extravagantly ideal standard. There is in our judgment nothing in this ground of appeal. Ground 7 58. Mr Cadin contended that some inappropriate matters were raised in Mr O'Connell's final speech. We will take each of these in turn. 59. The first matter concerned cling-film in the shed and cling-film used to wrap the hidden cannabis. In his interviews by the police the following question by the police and answer by Batho appears:- "Question: Why do you keep cling-film in your shed? Answer: Why do I keep cling-film in my shed, um, I don't know; I wasn't actually aware there was cling-film in my shed to be quite honest with you; um, if there is a roll of cling-film in there, its been in there for years, its not a new one; I mean I cant remember the last time; I don't think I've ever gone to the shop and bought one." 60. In cross-examination at the trial Batho was asked about this and from his answers it became apparent that he used cling-film himself to wrap up his food to put it in the fridge or to heat food in the microwave in the shed. Batho was vigorously challenged on this inconsistent evidence and it was suggested to him that he had invented this evidence so as to try to explain why his palm print had appeared on cling-film wrapped round one of the

cannabis bars. This was entirely proper cross-examination. 61. In a somewhat different context, Mr Cadin subsequently raised with the Bailiff, in the absence of the Jurats, whether Mr O'Connell was barred by Article 2(10) of the Loi

(1908) au Sujet des Témoine et Informateurs from attacking what Batho had said in interview to the police. The Bailiff ruled (a ruling with which this Court respectfully agrees) that Article 2(10) prevents the Crown from making adverse comment on the failure of an accused to give evidence but does not prevent adverse comment on evidence which the accused actually gives. Mr O'Connell was fully entitled to comment adversely in his closing speech on Batho's evidence concerning the cling-film. 62. The second point relates to the evidence about Mrs Batho having been working. In interview Batho was asked "Does your wife work?" His answer was "No" , except that she did some work from home making clothes, curtains, dresses and the like. In cross-examination, once it had become clear that Mrs Batho had worked for Pound World until shortly before Batho's arrest, Mr O'Connell asked questions directed to attacking Batho's failure to make this clear to the police. This was raised by Mr Cadin with the Bailiff in the absence of the Jurats by reference to Article 2(10) of the 1908 Loi . The Bailiff held that Mr O'Connell was entitled to comment adversely on this evidence. Mr O'Connell did comment adversely in his final speech, as he was entitled so to comment. 63. The third point related to the alleged loan from Mrs Batho's sister. This appeared for the first time in the evidence of Batho and he and Mrs Batho were cross-examined about it. Mr O'Connell's cross-examination of both Batho and Mrs Batho raised a number of questions about the loan. But Mr O'Connell did not squarely put to either that this loan was an invention by them. That being so, Mr O'Connell was not entitled to say in his final speech to the Jurats (as he did say) that: "It is a question for you, learned Jurats, as to whether or not you believe that there was such a loan from Mrs Batho's sister." 64. The question for us is whether this error, coupled with the error already referred to in paragraph 55 above, constituted a miscarriage of justice. We unhesitatingly reject this contention by Mr Cadin. These were two minor errors by the prosecution in the course of the trial, which could not and did not alter the result. Faced with the evidence which was before them, the Jurats in any event would have convicted if these errors had not been made.

Conclusion

65. Accordingly we grant leave to appeal, but dismiss the appeal. Before ending this judgment, we wish to pay a strong tribute to the quality of Mr Cadin's advocacy and also of Miss Juste's , though in the event we called on her to address this Court on a limited number of the grounds of appeal. We are most grateful to both advocates for their assistance. Authorities. Snooks -v- AG

[1997] JLR 253 . R -v- Fisher [1965] 1 All ER 677. R -v- Hill (1993) 96 Cr. App. R . 456. Holley -v- AG [2003] JCA013. Loi

(1908) au sujet des Témoins et Informateurs . Loi

(1998) (Amendment) au sujet des Témoins et Informateurs . Bar Council Code of Conduct: para 708 (b)(i). SG -v- McGuffie

(1968) JJ 955 . Page Last Updated: 27 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bailii.org/je/cases/UR/2003/

CASE PAGE https://chat.esheria.ai/case-law/jersey/batho-v-ag-2003-jca-129-18-july-2003

Prepared on 24 October 2026 · Esheria