

JERSEY / JUDGMENT

Bayliss v AG [2004] JCA 196 (12 November 2004)

[2004] JCA 196

COURT
COURT OF APPEAL

BEFORE
P. D. Smith, Esq., Q. C., President;
C. S. C. S. Clarke, Esq., Q. C.; and
K. S. Rokison, Esq., Q. C.
Jason Paul BAYLISS
-v-
The Attorney General
Application for leave to appeal against
conviction on 5th May, 2004,
by the
Inferior Number of the Royal Court, en police
correctionnelle, on a not guilty

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C. S. C. S. Clarke, Esq., Q. C.; and
K. S. Rokison, Esq., Q. C.
Jason Paul BAYLISS
-v-
The Attorney General
Application for leave to appeal against
conviction on 5th May, 2004,
by the
Inferior Number of the Royal Court, en police correctionnelle, on a not guilty

plea to:

2 counts of:

Being knowingly concerned in the supply of a controlled drug, contrary to Article 5(c) of the Misuse of Drugs (Jersey) Law 1978

.

Count 6: diamorphine.

Count 7: cocaine.

[Counts 1-5 of the Indictment relate to two co-defendants, who have not appealed; the appellant pleaded guilty to counts 8 & 9.]

Leave to appeal was refused by the

Deputy Bailiff on 13

th

September, 2004; and on 22

nd

September, 2004, the appellant exercised

his entitlement, under Article 39 of the Court of Appeal (Jersey)

Law, 1961, to renew the application to the plenary Court .

Advocate C. J. Scholefield for the Appellant;

Advocate B. H. Lacey, Crown Advocate.

JUDGMENT

THE PRESIDENT:

Introduction

1. This is an application by Jason Paul Bayliss for leave to appeal against his conviction on 7 May 2004 by the Inferior Number of the Royal Court, Mr. F. C. Hamon, OBE, Commissioner presiding, on two counts of being "concerned in the supply (sic) of controlled drugs, contrary to Article 5(c) of the Misuse of Drugs (Jersey) Law 1978" . We return to the significance of this wording below. Advocate C. J. Scholefield appeared for the Applicant and Crown Advocate B. H. Lacey appeared for the Respondent. We are indebted to both of them for their helpful submissions.

Background

2. Most of the evidence adduced by the prosecution against the Applicant at the trial was comprised in a series of facts agreed by the Crown, the Applicant and his co-accused Elsa Alexandra Presume. These revealed that on 6 February 2004 one Mark Disbury pleaded guilty to the importation on Saturday 15 November 2003 at the States of Jersey Airport of 93.9 grammes of heroin and 41.71 grammes of cocaine. Disbury had arrived by air that morning with two of his children, aged eleven and seven years, and he checked into the Merton Hotel on the outskirts of St. Helier, in which he had booked accommodation. 3. Disbury had with him a mobile telephone, the SIM card of which, when subsequently forensically examined, revealed the number of the Applicant's mobile telephone stored with

the initial "J". Investigations, including examination of the Applicant's mobile telephone, revealed that on 15 November 2003 Disbury called that telephone from a public payphone on the ground floor of the Merton Hotel at 10.21 a.m.; that at 10.37 a.m. Disbury again rang the Applicant's mobile telephone; that at 10.44 a.m. Disbury attempted to call his own mobile telephone (which would not operate automatically in Jersey); that at 11.02.04 and 11.02.44 and 11.04.49 a.m. the Applicant's mobile telephone was used to make calls to Disbury's mobile telephone; that at 11.09 a.m. the Applicant's telephone was used to ring the public payphone at the Merton Hotel; that at 11.11 a.m. the Applicant's mobile telephone was used to obtain from Jersey Telecom, via text, the switchboard number of the Merton Hotel and that at 11.12 a.m. the Applicant's mobile telephone was used to call the switchboard number of the Merton Hotel, that call lasting for 2 minutes and 44 seconds. In addition, a number of text messages were sent to the Applicant's telephone. We comment on these messages later in this judgment. 4. Meanwhile at approximately 11.05 a.m. a motor car registered in the name of the Applicant's father was observed to drive slowly around a car park near the Merton Hotel and then drive slowly past the hotel. The Applicant was observed by plain clothed police officers driving the car and Presume, his girlfriend, was the front seat passenger. At approximately 11.20 a.m. the car was observed to drive past the front door of the Merton Hotel and park in the coach parking area just past the front of the hotel. The brake lights remained on while Presume was observed to get out of the car (the Applicant remained inside) and walk in the direction of Belvedere Leisure, opposite the front door of the hotel. 5. Plain clothed police officers then observed Disbury leaving the hotel with his children. Disbury had the heroin and cocaine with him, the drugs being individually wrapped in cling film packed in a white sanitary disposal bag which, in turn, was inside a further white disposal bag taken from Disbury's hotel room bathroom. 6. Disbury met Presume and the two were observed to speak together briefly. They then walked with the two children into Belvedere Leisure. In a shop there Disbury bought sweets for his children. Presume purchased nothing. Disbury and Presume and the children then left the shop. 7. Disbury and Presume walked side by side to the Applicant's parked car. The Applicant had remained in the driver's seat of the car throughout, with the engine running. 8. Presume opened the front passenger door and sat in the front passenger seat. Disbury was observed to stand within a yard of the front nearside of the car, look up and down the road and then lean forward and over into the front nearside of the vehicle. The offside indicator was then observed to come on and the car drove off with the Applicant driving. 9. Disbury was arrested shortly afterwards. Meanwhile police officers had attempted to intercept the Applicant's car but he drove so fast that they lost sight of it. His car was spotted and lost sight of again and was eventually stopped in a field entrance at St. Martin. The Applicant and Presume were arrested and taken to police headquarters. 10. The police believed that Disbury had placed the package containing the drugs into the Applicant's car outside the Merton Hotel. At about 3.00 p.m. on the same day a white bag of the type used in the guests' bathrooms in the Merton Hotel was found in undergrowth along a track leading into a field at St. Saviour. The bag bore Presume's right palm print and contained another white bag in which there were two plastic bags, one of which held 93.99 grammes of heroin in three clear

film wraps with a total street value of between £28,197 and £42,295, and the other 41.71 grammes of cocaine in two further bags wrapped in clear film. 11. A Jersey telephone directory was seized from the Applicant's home. Written on the back in the Applicant's handwriting was the number of Disbury's mobile telephone followed by the word "Ronnie." A search of the car driven by the Applicant and already referred to, revealed a social security check receipt. On the back was written "Mark Disbury", the Jersey Telecom Directory Inquiries number and the number of the Merton Hotel's switchboard. Disbury's room at the Merton Hotel was searched and revealed a keycard with "724231, Ext 1380" written on it in Disbury's hand. 724231 is the number of the Merton Hotel switchboard and Disbury's room was No. 380. Below it appeared the Applicant's mobile telephone number preceded by "J". 12. At the trial police officers described attempts to stop the Applicant's vehicle and him driving as if determined to escape. Although he denied any knowledge of the bag containing the drugs when interviewed by the police, the Applicant admitted at the trial that he did see it being placed in the front passenger footwell of the car but thought that Disbury was delivering three small "score" bags of heroin worth only £50 each which he had arranged to buy from Disbury for £130 and that he, the Applicant, had no knowledge of the rest of the drugs. He said that when he drove away from the Merton Hotel he thought that he was being chased by people who wanted to get information from him as to the whereabouts of a friend who owed a lot of money for drugs. 13. Presume gave evidence which generally supported the Applicant's story alleging that whenever it was realised that the bag deposited in the car by Disbury contained more than three score bags he had attempted to dispose of it. Disbury was called as a witness on the Applicant's behalf and he also generally supported what the Applicant had said and alleged that he had put all the drugs in the car in order to get rid of them because he suspected at that point in time that he was under police surveillance. The Powers of this Court on an Appeal against Conviction 14. Article 25(1) of the Court of Appeal (Jersey) Law, 1961 ("the Law") reads as follows: "On any appeal against conviction, the Court of Appeal 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 which the appellant was convicted should be set aside on a 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 may, notwithstanding that it is of the 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." 15. Mr. Scholefield relied not only on two grounds which are expressly stated - that the verdict is unreasonable; that there was a miscarriage of justice - but also argued that we were required to consider whether the verdict was unsafe or unsatisfactory. 16. The wording of Article 25(1) of the Law is similar to that of Section 4(1) of the English Criminal Appeal Act 1907. The "unsafe or unsatisfactory" test was included in Section 2(1) of the English Criminal Appeal Act 1968. Although, on the face of it, the words appear to describe two criteria no difference in their meanings was discerned and, when amended by Section 2(1) of the Criminal Appeal Act 1995, only the word "unsafe" was retained (see generally Blackstone's Criminal Practice 2004: D23.17). 17.

The "unsafe or unsatisfactory" test has been construed in England as requiring the Court of Appeal to ask itself whether it has some "lurking doubt" as to whether an injustice may have been done (see *R. -v- Cooper*

[1969] 1 QB 267 at p. 271F per Widgery LJ and *Stafford -v- DPP*

[1974] AC 279 at p. 472 per Lord Kilbrandon). However, to date the English amendments have not been adopted in Jersey and the judgment of this Court in *Hall -v- Attorney General* 1996 JLR 129 suggests that the view, at any rate at that time, was that the "unsafe or unsatisfactory" test was not only not relevant to this Court's function but that the converse was not even thought to be arguable (see p. 137). 18. Then came an article in the October 1998 edition of Volume 2 of the *Jersey Law Review* by Mr. Robert Harman, QC, a former member of this Court who has long experience in the field of criminal law. Under the heading: "Criminal Appeal Law: Time for Change?" Mr. Harman asked whether the time had come to change the law by introducing the "unsafe or unsatisfactory" test in this jurisdiction. In his article Mr. Harman referred to the judgment of this Court in *Hall -v- Attorney General* but pointed out that in a number of cases the Royal Court, in exercising its appellate jurisdiction, had applied that very test and had been prepared to allow appeals where there remained "a lurking doubt." 19. Mr. Harman's article was adverted to in the judgment of this Court in *Swanston -v- Attorney General* (unreported 1998/234) and M. G. Clarke JA said the following at p. 3: "For our part we consider that it may well be desirable, in an appropriate case, for this Court to consider whether, and to what extent, the English authorities relating to the 1907 Act should remain to be applied uncritically in relation to the 1961 Jersey Law and to what extent, if at all, it is permissible to apply the approach of modern English Criminal Law, when it is interpreting and applying different statutory language, to the interpretation to be placed upon the provisions of the 1961 Jersey Law, having regard to more modern conditions and thinking on the operation of the criminal justice system." 20. While in *Swanston* this Court did not consider it either necessary or appropriate to reach any concluded view on the matters set out in the remarks we have quoted, Mr. Scholefield contended that in the instant case it would be desirable for us to carry out the careful consideration envisaged in *Swanston* 's case. He argued that we should recognise the concept of "a lurking doubt", act upon it and quash the Applicant's convictions. 21. Mr. Scholefield contended that if it was permissible for the Royal Court to adopt the "lurking doubt" test it would be paradoxical if this Court, which deals with appeals in more serious cases in which the impact of injustice is correspondingly greater, was to remain confined to the provisions of Article 25(1) of the Law. He asserted that those restricted provisions cannot be explained or justified on the basis that the institution of trial by jury is thereby protected as statutory offences are tried by the Inferior Number. According to Mr. Scholefield there was actually a double paradox - viz., in the case of a statutory offence the accused faced trial by Jurats who might be case hardened; and the accused's conviction, which might result in a long custodial sentence, could only be considered on appeal by a court - this Court

- with relatively restricted powers. 22. Insofar as Mr. Scholefield's contentions amounted to an invitation to us to construe Article 25(1) of the Law as if the "unsafe or unsatisfactory" test and its cognate "lurking doubt" concept can be extrapolated from it we do not consider it to be open to this Court to accept it. Apart from the fact that the words of Art 25(1) do not appear to us to admit this interpretation, such a step would be against the weight of authority. We have already referred to the decision of this Court in *Hall -v- Attorney General*. In *Bell -v- Attorney General* 2001 JLR 400 this Court once again rejected the proposition that the "unsafe conviction" test is applicable in Jersey (see page 403, para 9). In Guernsey, the Court of Appeal has taken the same view of the identical wording of the equivalent provision of the Court of Appeal Law in that jurisdiction (see *Ogier & Le Noury* (1989) Guernsey Court of Appeal: No. 27 (Criminal) and *Law Officers -v- Guest* (2003) Guernsey Court of Appeal: 290). Furthermore, we do not understand Mr. Harman in his article to be proposing that the Court of Appeal should attempt to change the law. It required legislation to introduce the "unsafe or unsatisfactory" test in England and Wales and we consider that it is a matter for the States to decide whether it should be introduced here. 23. It follows from what we have said that insofar as this Court in *Swanston*'s case may have been suggesting that English authorities on the application of the "unsafe or unsatisfactory" test could be applied whenever the Court of Appeal is exercising its function under Art 25(1) of the Law, we respectfully disagree. However Mr. Scholefield utilised the remarks we have quoted from the judgment in that case to found an alternative argument that the "unsafe or unsatisfactory" test and the relevant English jurisprudence should, nevertheless, inform or influence this Court when applying the criteria adumbrated in Art 25(1). He suggested, by way of example, that a verdict thought to be unsafe should be regarded as involving a miscarriage of justice. 24. We reject this argument also. Although a verdict involving a miscarriage of justice will inevitably also be unsafe, the converse is clearly not the case in the sense that the introduction of the "unsafe or unsatisfactory" test in England and Wales obviously altered the approach to be taken in appeals against convictions in criminal cases. If the "unsafe or unsatisfactory" test cannot be extrapolated from the words of Art 25(1) of the Law in our judgment it cannot be brought into the equation by a side wind. In this jurisdiction appeals against conviction fall to be analysed by this Court applying the tests set out in Art 25(1) in the light of the authorities relevant to those tests. The question of whether the verdict is unsafe or unsatisfactory does not arise for consideration and the jurisprudence pertaining to it is not germane to this Court's function. 25. As to Mr. Scholefield's paradoxes, we would point out that Jersey is not unique in having schemes in which the appellate court examining less serious convictions has wider powers than the court empowered to hear appeals in more serious cases. In Northern Ireland, for example, criminal appeals from the magistrates' courts are heard de novo in the County Courts whereas the legislation dealing with appeals from the Crown Court to the Court of Appeal is similar to that in England and Wales. As to the argument that this Court's powers of supervision of criminal trials before the Inferior Number may be inadequate, we respond by saying that in our opinion the decision as to the extent of those powers is a matter of policy for the legislature. 26. Turning to the adoption by the Royal Court of the "lurking doubt" test, we observe that we have not

been referred to any instance in which this test has been utilised by the Superior Number when exercising the jurisdiction conferred on it by Article 24 of the Law. It appears that all of the cases in which it has been adopted have involved appeals to the Royal Court under Article 14 of the Police Court (now the Magistrate's Court) (Miscellaneous Provisions) (Jersey) Law 1949 . But that Article is fundamentally different from Article 25(1) of the Law in that it does not prescribe the criteria to be applied by the appellate court. Accordingly, we cannot accept that those cases have anything to say as to the true interpretation of Article 25(1) and we would add that it is not clear whether detailed argument was advanced to the Royal Court on any of the occasions on which the "lurking doubt" test was utilised. Is the Verdict Unreasonable? 27. We accept Mr. Scholefield's criticisms of the prosecution case to the extent that, in our judgment, the evidence of the calls to and from the Applicant's mobile telephone on 15 November 2003 did no more than establish that the Applicant and Disbury were in contact with each other on that day and the text messages did not constitute incriminating evidence against the Applicant. But as we will explain later in this judgment, we do not accept that when the significance to be attached to the telephone calls is accurately assessed and the text messages are left out of account, it follows from Disbury's evidence that the Jurats were bound to have had a reasonable doubt. 28. Mr. Scholefield referred us to the case of Armstrong

[1922] 16 Cr. App. R. 147 in which the appellant had been convicted for stealing or receiving a suitcase (it is not clear which) having been found in possession of a shaving brush and soap which formed part of its contents. The appeal was allowed on the basis that "the verdict could not reasonably have been arrived at." Mr. Scholefield sought to equiperate the objects in that case with the traffic on the Applicant's mobile telephone on the day in question. 29. As is apparent from what we have already said, if the only evidence available to the Royal Court in the instant case had been the telephone traffic it would have been difficult to sustain the Applicant's convictions. But there was much more relevant and incriminating evidence than that, both in the agreed facts and also in what was adduced from the defence witnesses both by way of evidence in chief and in cross-examination. In our judgment, Armstrong's case is not comparable and does not assist the Applicant in any way. 30. Mr. Scholefield also relied on the decision of the English Court of Criminal Appeal in Wallace

[1931] 23 Cr. App. R. 32. That was a murder case in which there was only circumstantial evidence against the accused but each apparently incriminating point had an alternative explanation which did not implicate him. It was clearly a case in which the totality of the evidence could not have been said to enable a jury, properly directed, to be satisfied of guilt beyond reasonable doubt and the verdict was quashed. But it was a very different case from the instant case. Here there is ample incriminating evidence including, and in particular, the admission of the Applicant that - he says unwittingly - he was in possession of all of the drugs imported by Disbury and not just three score bags. 31. The Jurats heard the evidence of the Applicant, Presume and Disbury and saw them giving it. It was open to them to conclude that those witnesses were all lying in respect of the Applicant's role.

There is no reason to believe that they did not consider carefully the fact that by his evidence Disbury increased significantly his own culpability, compared with what he had revealed to the police. But it was not incumbent on the Jurats to reach a conclusion as to what Disbury's motive may have been in giving that evidence before deciding to disbelieve him in his attempt to exonerate the Applicant. One only has to look at the transcript of Disbury's answers to questions put to him in cross-examination seeking explanations as to his lies to the police, to find ample grounds for concluding, without even seeing or hearing him, that Disbury was not a witness whose material evidence could be relied on. 32. What is more, significant improbabilities and discrepancies in and between aspects of the evidence of all three witnesses were skilfully exposed in cross-examination - for example, as to how Disbury proposed to detach the three score bags from the bulk of the heroin; as to whether the Applicant and Disbury had agreed a price for the three score bags before the bag containing all of the drugs was deposited in the car; as to whether anything was said about payment when Disbury deposited the drugs in the car without being paid for them; as to the Applicant knowing that Disbury used both Mark and Ronnie as his first name; as to Disbury's failure to tell the Applicant or Presume that he thought he might be under surveillance or that he was giving them a much larger quantity of drugs than that allegedly ordered; as to whether Disbury had discussed the case with the Applicant in prison; there were many more. 33. We would add that in answer to the Commissioner, Disbury came perilously close to admitting that the Applicant was indeed concerned in the supplying of the drugs. It was put to him that the distribution of the drugs would involve a procession of people "from the Merton Hotel." To this Disbury replied "No, they were to keep in touch with me by phone, but it wasn't working so they were told to phone Jason's phone to get in touch with me." Obviously this arrangement could not have worked unless the Applicant himself was complicit. 34. Mr. Scholefield also contended under this heading that the Royal Court could not logically, on the one hand, reject Disbury's evidence as to his own role as prime mover in the enterprise and, yet, apparently accept his evidence as to that role when it came to sentence him. This, Mr. Scholefield argued, was unreasonable. 35. We do not accept that the discrepancy asserted by Mr. Scholefield exists. It does not follow from the Royal Court's conclusions that the Applicant was guilty of the offences with which he was charged that Disbury was not "a self-confessed drugs dealer or baron" (to quote from the sentencing remarks applicable to him). The rejection of Disbury's evidence at the trial as to the Applicant's role did not involve acceptance that Disbury's own role was significantly less serious than that which he claimed for himself. 36. In our judgment the verdict is not unreasonable. Was there a Miscarriage of Justice? 37. In our opinion Mr. Scholefield correctly identified the test to be applied under this heading (adapted as appropriate to be applicable to the Jurats) when he quoted to us the following passage from *Swanston -v- Attorney General* (at p. 4): "... whether it can be said that no reasonable Jury could have come to the conclusion it did, having regard to the totality of the evidence." 38. Mr. Scholefield went on to draw our attention to a number of factors which, he argued, indicated that the test adumbrated above had not been met. 39. One of those factors was the traffic on the Applicant's mobile telephone. While we agree, as we have

already stated, that this does not have the significance attributed to it by the prosecution at the trial we reiterate that this does not mean that we do not consider that there was other ample evidence on the basis of which the Jurats were entitled to convict. 40. Mr. Schofield contended that there was "almost no material conflict of eye-witness testimony." In our opinion there was, and we have specified some of it above; but even had there not been we reject the proposition, implicit in Mr. Schofield's contention, that the Jurats were bound to accept the evidence of the Applicant, Presume and Disbury insofar as they attempted to exculpate the Applicant. Furthermore, we consider that much of the evidence that was not disputed by the Applicant or on his behalf pointed strongly to the Applicant's guilt and, in relation to Disbury, we repeat that there were ample grounds for rejecting the relevant evidence given by him. 41. Mr. Schofield suggested that there is "a worrying paradox" in the Jurats disbelieving Disbury at the trial yet, when it came to sentence, accepting Disbury's evidence as to his own level of culpability. Mr. Schofield asserted that as Disbury's account of his degree of responsibility was believed, a court would be logically compelled to accept that the Applicant was (as Mr. Schofield put it) "a customer rather than an accomplice." 42. We cannot accept this suggestion. Disbury's attempt to diminish the Applicant's role did not have the effect of elevating his own. In our opinion there was no inconsistency between the rejection of Disbury's evidence as to the Applicant's degree of culpability and the assessment made of his own. 43. In our view there was no miscarriage of justice in this case. The Indictment 44. As we have already pointed out in the introduction to this judgment the Applicant was convicted on two counts which alleged that he had been "concerned in the supply" of controlled drugs. In fact, Art 5(c) of the Misuse of Drugs (Jersey) Law, 1978 defines the offence as being "concerned in the supplying" of controlled drugs, and in Attorney General -v- Antunes 2003 JLR 144 the Deputy Bailiff pointed out (in our view correctly) that the two phrases do not mean the same thing (see pages 152-154, paras 19-24). 45. Mr. Schofield argued that the counts on which the Applicant had been indicted did not disclose an offence known to the law. The indictment was a nullity as far as these counts were concerned. Miss Lacey, on the other hand, argued that the reference to "supply" instead of "supplying" in both the statement of offence and particulars of offence of the two counts on the indictment was a mere slip with no significance. The whole case was about "supplying". Furthermore, in his summing up by quoting to the Jurats the relevant passages from the Deputy Bailiff's judgment in Antunes, the Commissioner had adequately explained to the Jurats that their task was to determine whether the Applicant had been "concerned in the supplying" of a controlled drug in each instance. 46. In R -v- Ayres

[1984] 1 AC 447 the House of Lords considered the case of an accused who had been charged and convicted on indictment of the common law offence of conspiracy to defraud, whereas he ought to have been charged with conspiracy to obtain property by deception contrary to Section 1(1) of the Criminal Law Act 1977. It was held that there had been no actual miscarriage of justice because the particulars of offence in the indictment and the judge's directions to the jury made it plain that the crime alleged was conspiracy to obtain money

by a deception and the conviction was upheld under the proviso equivalent to that which appears in Art 25(1) of the Law. 47. We do not accept Miss Lacey's argument that the errors in the statement of offence and particulars of offence in each count were slips of no consequence which could simply be ignored by this Court. On the other hand we do not accept that the indictment was a nullity as far as the counts in question are concerned. In each instance both the statement and particulars clearly related to a known and subsisting criminal offence but pleaded it in inaccurate terms. Therefore, the indictment was merely defective (see Ayres at page 461A per Lord Bridge). 48. In Ayres ' case the error was characterised as "a material irregularity", a criterion which does not appear in Art 25(1) of the Law. However, in our opinion, the errors in the instant case can be described as "wrong decisions of law" on the part of the Commissioner in permitting the Jurats, albeit inadvertently, to consider the counts in their defective state (see R -v- Whitehouse

[1977] QB 868). 49. As to the application of the proviso, in Ayres ' case Lord Bridge said in relation to a defective indictment (at page 461A) that "... whether a conviction ... can properly be affirmed under the proviso must depend on whether, in all the circumstances, it can be said with any confidence that the particular error in the pleading cannot in any way have prejudiced or embarrassed the defendant". 50. Mr Scholefield argued that it cannot be said with confidence in the instant case that the Applicant was not prejudiced. In relation to one or other or both counts the Jurats may have sought to find and, mistakenly, identified a supply. Focussing on the factors considered by the House of Lords in Ayres ' case (at page 462A) Mr Scholefield pointed out that in the instant case, unlike the position in Ayres ' case, the particulars of the offences in the indictment, by referring to " supply " rather than " supplying " did not make it clear beyond doubt that the substance of the crime alleged was that as actually specified in Article 5(c) of the Misuse of Drugs (Jersey) Law 1978. Moreover, the evidence did not amply prove the offences and it cannot be said that the Jurats' verdicts meant that they must have been sure that the Applicant was guilty of the offences as properly described. 51. We reject these arguments. In our opinion the Commissioner in his summing up made it clear beyond peradventure to the Jurats that what they were required to consider, in each instance, was whether the Applicant was " concerned in the supplying " of the controlled drug in question. In our judgment there was no possibility of their having misunderstood their task. Furthermore, as we have already concluded, there was more than ample evidence to support the verdict reached on each count.

Conclusion

52. The effect of what we have said is that, there having been wrong decisions of law in this case, we give leave to appeal. However, as we consider that no substantial miscarriage of justice has actually occurred we apply the proviso to Article 25(1) of the Law and dismiss the appeal. Authorities. *Swanston-v-AG* (25 th November, 1998) Jersey Unreported; [1998/234]. *Tromans-v-AG* (21 st October, 1997) Jersey Unreported; [1997/195]. *Armstrong* [1922] 16 Cr. App. R. 147. *Wallace* [1931] 23 Cr. App. R. 32. *R. D. Harman*: "Criminal Appeal Law - Time for

a Change?" [1998] Jersey Law Review. Vol. 2. Issue 3. AG-v-Antunes and Ors 2003 JLR 144 .
Bell-v-AG 2001 JLR 400 . R-v-Graham, Kansal, Ali, Marsh

[1997] 1 Cr App R 302 . R-v- McVitie

[1960] 44 Cr. App. R. 201. R-v-Ayres [1984] AC 447. R-v-Whitehouse

[1977] QB 868 . R-v-R

[1992] 1 AC 599 . Court of Appeal (Jersey) Law, 1961: Articles 24, 25(1). Criminal Appeal Act 1907: s.4 (1). Criminal Appeal Act 1968: s.2 (1). Blackstone's Criminal Practice 2004: D.23.17. R-v-Cooper [1969] 1 QB 267. Stafford-v-DPP [1974] AC 279. Hall-v-AG 1996 JLR 129 . Bell-v-AG 2001 JLR 400 . Ogier and Le Noury (1989) Guernsey Court of Appeal: No.27 (Criminal). Law Officers-v-Guest (2003) Guernsey Court of Appeal 290. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949: Article 14. Criminal Law Act 1977: s.1(1). Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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