

JERSEY / JUDGMENT

Beamer -v- AG 15-March-2006

[2006] JCA 036 (15 March 2006)

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COURT OF APPEAL 15 March Before: J. P. C. Sumption, Esq., Q. C. (President); Dame Heather Steel; and G. C. Vos, Esq., Q. C. John Michael Beamer v The Attorney General Application for leave to appeal against the conviction by the Criminal Assize Court on 20 th October, 2005 on charges of: 1 count of: Conspiracy to supply a controlled drug (Cannabis) S. M. Baker, Esq., Crown Advocate. Advocate R. C. L. Juste for the Appellant. Application to be placed directly before the plenary Court without first being considered by a single judge

JUDGMENT

STEEL JA: 1. This is the judgment of the Court. The Applicant, John Michael Beamer, seeks leave to appeal his conviction of 20 th October 2005, when, having been tried before Commissioner Sir Richard Tucker QC and a jury, he was convicted of an offence of conspiracy committed with others to supply a quantity of cannabis resin to persons unknown contrary to Article 5(c) of the Misuse of Drugs (Jersey) Law 1978 , that offence being committed between 1 st September 2004 and 4 th November 2004. 2. His Co-Defendant Mark Goldie was acquitted by the jury. Other Co-Defendants Christopher Thomas Morgan, Paul Thomas Graham and Steven James Pereira had pleaded guilty to the offence before the trial. 3. On 16 th December 2005 together with his Co-Defendants he was sentenced by the Superior Number. His sentence was 3½ years' imprisonment, and a Confiscation Order was made in the sum of £2,260.59. 4. There is no application relating to his sentence. 5. This application is brought on the ground that the Learned Commissioner misdirected himself in admitting evidence concerning three matters: (i) Evidence relating to text messages on 27 th October 2004 between the Applicant's mobile phone and a man, Scott Sumner, using his mother's mobile phone; (ii) Evidence relating to CCTV observations at Roberts Garage, Springfield, on 1 st November 2004 from 17.03 hrs showing meetings between the Applicant, Pereira and four other men; (iii) Evidence concerning an alleged deal list found in the Applicant's wardrobe in his bedroom. 6. The application is based solely on the admissibility of this evidence. No complaint is made about the summing up or the way in which the jury were directed in relation to how they should approach this evidence. 7. Legal argument concerning these three matters took place on the first morning of the trial, and the Learned Commissioner ruled in each case that the evidence was relevant, probative and should be admitted. In each case he found that the probative value of the evidence outweighed its prejudicial effect. 1. The text

message evidence 8. Advocate Juste submitted that the evidence should not be admitted for the following

reasons:

- (i) the Crown was unable to prove that the Applicant sent the message to Sumner, only that the message was sent from his mobile phone; (ii) the Crown could not prove that Sumner sent the reply, only that the text message came from Sumner's mother's phone to which he had access on that day; (iii) it cannot be established that the text messages relate to the allegation of conspiracy. In fact the evidence, if the jury accepted that the calls were made as alleged, related to a criminal matter not the subject of a charge, and the Applicant would be prejudiced in having to explain this to a jury. 9. Advocate Juste submitted that the prejudice arising from the admission of this evidence would outweigh its probative value. The Learned Commissioner here had to balance any potentially extraneous prejudice arising from the explanation of other criminal activity against the probative relevance of this evidence to the conspiracy charge. 10. Advocate Baker, on behalf of the Crown, submitted that the messages were relevant and probative of the Crown's case. The two text messages have to be viewed in the context of the evidence that Graham, the money collector, arrived in Jersey on Saturday 30 th October, and provides evidence that the Applicant was arranging to collect money from Sumner, a convicted drug dealer. Sumner had pleaded guilty on 9 th July 2004 to offences of being knowingly concerned in the supply of both cannabis and ecstasy. 11. The messages had to be put in the context of the message the Applicant had received from Pereira to the effect " get that dow sorted out for fri m8 ." This was followed by the message from the Applicant to Sumner " Just to say that after you have seen my mate that makes it 2380 try to get me 15 for Friday mate is that sound ." The message from Sumner to the Applicant was " Yeah that's cool it will be my mate that will meet u Thought it was 2280 cases we gave ur mate 300 ." 12. The Crown case was that the jury could properly infer that these messages passed between the Applicant and Sumner were in relation to the collection of money for Graham. Further, it was submitted that the evidence indicated that the Applicant was Pereira when he received calls on his mobile phone from Graham. 13. The Crown case was that the text message evidence is relevant to a fact in issue as it shows the Applicant's involvement in the conspiracy and the level of his role in the conspiracy. 14. The Learned Commissioner ruled that the evidence was relevant and probative, and that the probative value far outweighed any prejudice to the Applicant. If the text messages related to some other matter as the Applicant alleged, it was open to him to say so in evidence. 2. The evidence of CCTV coverage relating to Roberts Garage, Springfield, on 1 st November 2004 from 19.03 hrs showing the Applicant and Pereira meeting other men not the subject of the conspiracy charge. 15. Advocate Juste submitted that the evidence was insufficiently relevant to a fact in issue to be admissible because the Crown were not able to prove that the evidence was connected to the offence of conspiracy. She further submitted that the prejudicial effect of that evidence outweighed the probative value. 16. Advocate Baker's submission was to the effect that the evidence objected to had to be considered in the

context and chronology of all the other evidence relating to the activity involving the Applicant and Pereira on 1 st November 2004. 17. At 18.35 hrs Graham made a call from a public phone kiosk to Pereira's mobile phone. The Applicant admits that he was with Pereira at that time. 18. The CCTV recording shows that at 19.03 hrs a male, Lee Harrison, arrived at the Springfield garage and appeared to be waiting for someone. 19. At 19.06 hrs the Applicant and Pereira drove onto the forecourt of the garage in Pereira's red Metro. Pereira left the car to use the cash point, Harrison spoke briefly to the Applicant who was still sitting in the Metro. Harrison then spoke to Pereira at the cash point. Harrison went back to his vehicle, got something out and walked briskly to Pereira's Metro where he placed that something in the rear of that car behind the driver's seat. Neither Pereira nor the Applicant turned to look what Harrison was doing. Pereira and the Applicant then drove off. 20. At 19.34 hrs three males arrived on the forecourt in a Ford Fiesta. They were Daniel Kennedy, Joseph Deuchar and Leon Cole. Cole used the cash point whilst the other two went into the shop. 21. At 19.36 hrs the Applicant and Pereira arrived in a blue Ford Escort belonging to Mark Goldie. The Applicant was driving. As Pereira filled the vehicle with petrol the three males spoke to the Applicant who handed something to Deuchar who stood back up and examined it. It appeared to be a piece of paper, the Crown assert a dealers list, the Applicant, a mobile phone. Deuchar leant into the car and handed something to the Applicant. Pereira returned, got into the car and the Applicant drove off. 22. At 19.39 hrs there was a further call from the public kiosk to Pereira's mobile. The Applicant was present. At 20.33 hrs there was a third call from the kiosk to Pereira's mobile, and at 20.37 hrs Pereira and the Applicant picked up Graham from the telephone kiosk and all three drove off together up Mount Bingham. 23. At 20.43 hrs Graham was dropped off back at the kiosk where he was arrested. He was found to be in possession of £1,985 in cash in two coin bags which bore Pereira's fingerprints. 24. At about 20.15 hrs Graham had passed a rucksack to Morgan which was eventually found to contain £32,800 in cash. Two coin bags in the rucksack, each containing £1,000, bore Pereira's fingerprints. 25. The Crown case was that the fact that others not charged were shown on the CCTV footage does not affect the admissibility of that evidence against the Applicant. 26. The Learned Commission ruled that the evidence was admissible as it was relevant and probative. It was open to the jury to infer that those meetings were evidence of a conspiracy relating to the supply of cannabis. If there was an innocent explanation, it was open to the Applicant to give evidence to that effect. He ruled that the probative effect of the evidence outweighed any prejudice to the Applicant. 3. The alleged deal list found in the wardrobe in the Applicant's bedroom 27. Advocate Juste submitted that it was insufficiently relevant to a fact in issue to be admitted. She takes no issue with the seizure or continuity in relation to this exhibit. 28. Her submission is that the list was written on the back of a receipt dated 30 th March 2004, over seven months before the conspiracy was alleged to have started. Further, she submits, it cannot be shown that the Applicant wrote it. The Applicant was to give evidence at his trial that it was not his writing; it was probably a score sheet from a game played at his house with his friends and he called his father to give evidence that he had seen that list in the early summer of 2004. Advocate Juste submits that the prejudice from this piece of evidence outweighs its probative value.

29. The Crown's case is that this is a dealers list and that it is both relevant and probative in the context of the conspiracy alleged. The Crown submit that the date on the document on which the list was written has no relevance as to when the list was written. The figures set out on the list are consistent with sums in which 9 bars of cannabis are dealt with discounts being applied. Pereira was to lead the police to a stash of 9 bars. 30. This evidence further has to be viewed in the context of evidence relating to the Applicant being seen to throw two dealer lists out of the red Metro car as it was being pursued by the police. These two dealer lists are written on extracts from a diary which also pre-dates the conspiracy alleged. The evidence was probative, and the Applicant, it was submitted, would be able to give evidence about it. In fact the Applicant did give evidence about it at the trial and it was for the jury to assess that evidence. 31. The Learned Commissioner ruled that the evidence was admissible; it was a matter for the jury to decide whether it was a dealers list, and in relation to the inferences which could be drawn from this evidence. 32. In relation to this matter Detective Constable Herd gave expert evidence in relation to the alleged dealer list and its contents. He was an investigating officer in the case and a surveillance officer as part of the surveillance team. 33. Advocate Juste questions his independence, but she accepts his status as an expert in relation to the drug scene in Jersey. She further accepts that in Jersey there are a limited number of such experts. Detective Constable Herd is one of whom are called to give evidence for both prosecution and defence. On any view the evidence is admissible, the weight to be attached to it is a matter for the jury and the independence of the expert was a matter to be investigated before the jury as it was during the course of DC Herd's cross examination. 34. There is no complaint made in relation to the way in which the jury were directed in the summing up to approach this evidence. 35. The Applicant here faced a charge of conspiracy. Where such a charge is laid, his activity with his Co-Defendants and others has to be admissible, as is the evidence of the activities of the Co-Defendants in relation to each other and others where the activities can be shown to have been done in furtherance of the conspiracy. It is for a jury to assess each piece of evidence separately and to decide on the basis of the evidence they accept whether the charge is proved against each Defendant. 36. The Applicant's submission fails here to distinguish between weight and admissibility. There will inevitably be some cases where evidence will be excluded as either irrelevant or of minimal probative weight. In the present case each piece of evidence had to be viewed within the wider pattern to decide whether the charge was proved and each piece of evidence the subject of this application was properly a matter for the jury to consider and assess together with any explanation offered by the Applicant. 37. At the invitation of Advocate Juste, this Court has been provided with a transcript of the trial proceedings and has considered the evidence given both for the Crown and the Applicant which relates to the 3 parts of the evidence which are the subject of this application. The Court has further considered the legal argument which was before the Learned Commissioner at the start of the trial. We are grateful for that opportunity. 38. We are satisfied that the evidence, the subject of this application, was in each case relevant, probative and admissible. The approach of the Learned Commissioner cannot be faulted; his discretion in each case was properly exercised. 39. This application therefore must be dismissed. Authorities Misuse of

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Prepared on 28 October 2026 · Esheria