

JERSEY / JUDGMENT

Hamilton and Owens v AG

[2010] JCA 136A (21 July 2010)

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COURT OF APPEAL st July 2010 Before : M. C. St. J. Birt, Q. C., Bailiff, President; J. W. McNeill Q. C., and; N. P. Pleming, Q. C. David Rhys Hamilton Dayle David Owens -v- The Attorney General Applications for leave to appeal against the convictions by the Royal Court on 10 th March, 2010 and the sentences passed by the Superior Number on 1 st July, 2010, on one charge of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug. Application for leave considered by M. C. Birt, Q. C. Bailiff, sitting as a single Judge of the Court of Appeal and referred directly to the full Court. R. C. P. Pedley, Esq., Crown Advocate. Advocate C. M. Fogarty for Hamilton. Advocate I. C. Jones for Owens.

JUDGMENT

THE president: 1. This is the judgment of the court. On 10th March 2010 Hamilton and Owens were convicted before the Inferior Number (Commissioner Clyde-Smith with Jurats Tibbo and Marett-Crosby) of a single count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 61(2)(b) of the Customs and Excise (Jersey) Law 1999 , ("the 1999 Law") the particulars being that on 8th May 2009 at Elizabeth Harbour in the Parish of St Helier, they were knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug specified in part 1 of the second schedule to the Misuse of Drugs (Jersey) Law 1978 , namely cocaine. 2. They now appeal on a point of law and seek leave to appeal on certain other grounds. We will for convenience refer to them as the appellants where appropriate albeit that they need leave on some aspects. The factual

background

3. Many of the facts were not in dispute and were proved by way of formal admission. We would summarise them as follows. The appellants are both 19 and are natives of north Wales. They were at school together and at the time of these events had known each other for about 7 years. At the material time they were both unemployed apprentice brick layers. Both were living at their respective homes and were financially supported by their mothers. Neither had been to Jersey before or knew anyone in the Island. They decided to travel to Jersey together on about Tuesday 5th May 2009 and left Holywell in north Wales in Owen's

car between 9-11pm on Wednesday 6th May. Hamilton supplied the funds in the sum of £400 in cash. They also had some cannabis resin with them which they smoked on the journey. They arrived in Tewkesbury near Bristol at about 3.05am on Thursday 7th May as shown by a receipt for a room at a Travelodge indicating that they had paid £55 in cash for the room. They left there 3 hours later and continued to Weymouth where they found they had missed the ferry, so paid £60 for a second hotel room. 4. The following morning, Friday 8th May, Hamilton bought a ticket for £250 in cash to travel to Jersey and they caught the 6am Condor Ferry, arriving at about 10.15am. Having driven off the ferry, the defendants were stopped by Customs officers and warned of the prohibitions in relation to drugs, firearms and pornography. They were not specifically told of any prohibition in relation to cash. Owens stated in reply that they intended to stay in Jersey for a couple of days and had decided to make the trip 4 days earlier. Owens said that the purpose of their trip was to go fishing but they had no accommodation booked but intended to stay at the local Travelodge. When informed that there was no Travelodge in the Island, Owens stated that they would then find a bed and breakfast. Owens also stated that Hamilton had bought the ferry ticket for about £250 in cash and, when asked how they had funded the journey, Owens said that he had saved his wages over 5 weeks. He said that he was the registered keeper of the vehicle. At the time of their arrival they had less than £100 in cash remaining, no accommodation booked, no return ticket and no local contacts. 5. The car was searched and two bank cards were recovered, both in the name of Darren McGilloway. Both of these cards had traces of cocaine on them. McGilloway had been staying at Hamilton's family home for a number of months. A small lump of cannabis resin was found in the passenger door which was the remainder of the amount they had been smoking on the journey down. The car also contained two fishing rods. 6. The car was subsequently searched and the rear wheels were removed from the vehicle. An X-ray revealed packages concealed inside. The defendants were arrested at 12.13pm. An examination of the tyres from the rear wheels showed that a number of brown taped packages were concealed inside. It was admitted that, in order to place the packages inside the tyres, it would have been necessary to use a machine and would not have been possible with hand tools. The extra weight in the tyres would have caused vibration in the vehicle and the faster the vehicle was travelling, the greater would have been the vibration. The contents of the packages were analysed and subsequently found to contain 984.82g of 2% purity cocaine. The expert evidence from the prosecution estimated that the Jersey street price would be £79,000, the wholesale price would be £64,000 and the purchase price in the United Kingdom would have been £31,000. Forensic examination revealed no trace of the DNA or fingerprints of either of the defendants on the packages or the tyres. 7. Both defendants were interviewed the following day. Hamilton was asked about the journey and gave much of the information about the journey referred to earlier. He said that it had been a spur of the moment decision to come. Indeed he had left without telling his mother and had only telephoned her on the way down to let her know what they were doing. They came to Jersey to go fishing and to 'get lashed'. They planned to stay until their money ran out. He denied all knowledge of the packages although he accepted that he used cocaine socially on occasions. He was questioned fairly closely about

the fishing rods from which it became clear that his knowledge of fishing was limited. Eventually, shortly after the commencement of the second interview which began at 12.32pm, he said "Alright then I'll tell you the truth". He went on to say that they were sent over to Jersey to bring money, not drugs. 8. He said that the fee was £1000 each. He explained "It was money I was bringing over, that I thought I was bringing over and so did Dayle think he's bringing money over not drugs. I wouldn't have done it if it was drugs. I told the lad that. I said 'If there's any drugs coming over I don't want nothing to do with it'. I said 'I'll take the money for you if you pay me a grand'" . He said that he was told to await a phone call then they arrived in Jersey. He said that he did not know what the money was for. He did not know if it was for cocaine. He just thought he was bringing money over for whatever purpose. He did not see the items being put in the tyre and did not think of checking to see whether it was cash or not. He said "I didn't ask any questions. You don't ask questions" . 9. Owens was interviewed at much the same time. He admitted to smoking cannabis and for the most part answered "No comment" to questions about the journey to Jersey. He did however agree when the officers put it to him that the purpose of the trip was to do some fishing and "go on the lash". The Customs officers then put the version of events which Hamilton had admitted to and Owens agreed that they thought they were bringing money down to Jersey and that he was also to be paid £1000. When asked about the details of what had been arranged, he replied on several occasions "I'm not sure" . He was then asked whether it was that he was not sure or that he just did not want to say, to which he replied "Both really" . 10. Customs Officer Perez gave evidence about the interview with Hamilton. He was cross examined and it was put to him that he had not explored with Hamilton matters such as where Hamilton thought the money had come from and what he thought it was to be for. He said he believed that Hamilton was not going to elaborate any more on what he had already said and therefore brought the interview to a close. Customs Officer McGaw gave evidence about the interview with Owens and similar questions were put to him. That officer also admitted that he had not specifically put to Owens that he knew there was cocaine in the car. 11. Customs Officer Jason Harrison was called as an expert and gave evidence about the value of the drugs. He said that the seizure in this case was of extremely low purity and was really at the lowest limit where the drug would have any effect. He also said that it was more common for money to be taken out of the Island rather than into the Island because, in the former case, money was either being exported to pay for drugs which were subsequently brought into the Island or was the proceeds of drug sales which were being remitted to those concerned in the United Kingdom. He was also asked about dummy or decoy runs and said that it would be unreasonable to have a dummy run involving a sacrifice of £31,000 worth of cocaine. 12. The final prosecution witness was Paul Cowan, a forensic expert in telephone communication matters. A mobile phone was recovered from each of the appellants on arrest. The phone recovered from Hamilton was without its SIM card which meant that the information which could be extracted by the forensic expert was incomplete. Nevertheless, the fact that it had recorded a text message to Hamilton at 11.17 on the day of arrest meant that the SIM card must have been in the phone at that time. Mr Cowan produced a digest of text messages sent to or from the telephones during the relevant

period. The counter party could only be identified by the name under which it was stored in the phone e.g. "Georgia". Mr Cowan confirmed that it was not possible to say that "Georgia" had sent a particular text only that it had been sent from her phone. The digest of text messages was provided to the Jurats. The texts show that the appellants were in touch with others concerning their progress to Jersey. We would quote in particular two texts which the Crown relied upon. At 21.31 on Wednesday 6th May which would have been either shortly before or shortly after the appellants set off to drive to Tewkesbury, there is a text from "Georgia" to Owens as follows:- "I don't know how far yous are planning on goin with this whole thing, I just think its all stupid, well dodgy. Do us a favour and tell Darren, if its goin much further I wont get involved with him. You think about it to Dayle, think about what you could be losein x" 13. Later at 23.33 there is another text from "Georgia" to Owens, at which time the appellants were en route to Tewkesbury, which reads:- "Will you have time for me threw all of this? It wont be long before my mum finds out. And I don't think I can have a relationship with a drug dealer being on the side its not fair? How long is this guna go on for? I love you to pieces that's why its killin me. x" 14. At the close of the prosecution case, both appellants made submissions of no case to answer but these were rejected by the Commissioner. Both appellants elected not to give evidence but each called his mother. Mrs Deborah Hamilton explained that she had been supporting Hamilton financially and had bought him a mobile phone a couple of weeks before he went to Jersey. She said that he had told her he was going to Jersey before he left. She also said that he telephoned as they were driving down the motorway and said he was going to Jersey for a few days. He was taking some money over for somebody and she was not to worry. She said that she was worried because she did not know whether you were allowed to take money to Jersey or why he was involved so she just asked him to come home. He said that he could not and that she was not to worry. She said that following that call Darren McGilloway, who had been living with them for several months, left the next day and she had not heard from him since. She said that she had agreed to put money in Darren McGilloway's account so that Hamilton could draw from this in Jersey as he had left his own bank card behind. 15. Mrs Heather Ellis is Owens' mother. She said that Owens had only been driving for 3 weeks at the time of the importation. She explained that Georgia was Darren McGilloway's girlfriend and that "Lucy" was Owens' girlfriend. Darren McGilloway was sometimes known as "Daz" or "Dazzy", "Daz" being one of the names which appeared on the digest of text messages. She said that she did not know that her son had gone to Jersey. She also explained that Georgia would sometimes text whoever was with Daz as she believed he did not have a phone. She could only think that the "drug dealer" referred to in the text message referred to earlier might be Daz but she did not know. She also explained that Georgia and Lucy knew each other well and often went out together. On occasion they might text from each other's phone and therefore messages sent from Georgia's phone might have been from Lucy or Georgia. 16. Following the conclusion of the evidence and counsel's speeches, the Commissioner summed up. Apart from the legal issue referred to below, no criticism is made of the summing up, following which the Jurats returned a verdict of guilty against both appellants. Hamilton's Appeal against conviction 17. In her written contentions, Advocate Fogarty, on behalf of Hamilton,

summarised her grounds of appeal as follows:- (i) The indictment was grossly defective in that it did not reflect the entirety of the conduct alleged. (ii) The directions to the Jurats sought and obtained by the Crown in view of the defective indictment resulted in uncertainty of the factual basis on which the appellants were convicted. (iii) The appellants' trial was in the circumstances unfair. (iv) There has accordingly been a miscarriage of justice. Advocate Fogarty accepted that grounds (iii) and (iv) were really dependant on grounds (i) and (ii). 18. Ground (ii) is a reference to a preliminary ruling given by Commissioner Sir Philip Bailhache on 10th December 2009. There was no dispute in this case that Hamilton and Owens had been concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug. The question was whether they had been "knowingly" concerned in such evasion as required by Article 61(2)(b). The question then arose as to what exactly this meant. The appellants' case was that they thought they were importing money and that if the Jurats believed this they were entitled to be acquitted in accordance with the decision in *R v Taaffe*

[1984] Cr. App. R. 301 which held that a defendant is to be judged on the facts as he believed them to be. Taaffe believed he was importing money (which was not prohibited although he mistakenly thought it was) whereas in fact, unknown to him, he was importing cannabis. It was for this reason therefore that the Crown sought a ruling as to the direction which would need to be given to the Jurats on the question of the appropriate mens rea for the offence. 19. In his judgment Commissioner Bailhache referred to English cases such as *R v Hussain*

[1969] 53 Cr. App. R. 448 which dealt with the equivalent English statutory provision which, for all practical purposes, is identical to Article 61(2)(b). The Commissioner held, following these cases, that it is not necessary for the prosecution to prove a defendant knew precisely what the goods were. It is sufficient that the prosecution can establish that a defendant knew that he was engaged in an operation involving the importation of goods which were subject to a prohibition. 20. He went on to note that, whereas at the time of the decision in Taaffe, the importation of money was not prohibited, the position was now different. Article 29 of the Drug Trafficking Offences (Jersey) Law 1988 prohibits the importation of "... goods intended by a person for use in drug trafficking or the proceeds of drug trafficking...". Accordingly, at paragraph 18 of his judgment, he summarised the way in which he would direct the Jurats as follows:- "First, the prosecution must prove that the goods imported were prohibited goods. The goods in this case were cocaine, and there is no dispute that the importation of cocaine is prohibited. Secondly, the prosecution must prove that the defendants knew or believed that the goods which they were importing were prohibited goods. If the Jurats find that these defendants knew that there was cocaine, or some other controlled drug, in the vehicle, the verdict must be 'Guilty'. If the Jurats find that the defendants believed that they were importing money which was either to be used for the purposes of drug trafficking or was itself the proceeds of drug trafficking, the verdict must be 'Guilty'. If the Jurats find that the defendants believed that they were importing money, but no more than that, the verdict must be 'Not Guilty.'" 21. At

the trial, Commissioner Clyde-Smith directed the Jurats in accordance with the ruling of Commissioner Bailhache. The sole issue at trial therefore was as to the state of mind of the appellants. If they believed that they were importing money, as they contended, they were entitled to be acquitted. If they knew they were importing a controlled drug or if they believed they were importing money which was either to be used for the purposes of drug trafficking or was itself the proceeds of drug trafficking (referred to hereafter as 'drug money'), they were guilty. 22. Although grounds (i) and (ii) and Advocate Fogarty's contentions concentrated on the form of the indictment, she accepted during the hearing before us that she was in effect challenging the correctness of the ruling by Commissioner Bailhache. 23. In our judgment, the ruling in December 2009, repeated by direction to the Jurats at the trial, was correct and consistent with a series of cases on the equivalent provision in England and Wales, namely *R v Hussain*

[1969] 53 Cr. App. R. 448, *R v Hennessey*

[1979] 68 Cr. App. R. 419, *R v Taaffe*

[1983] 77 Cr. App. R. 82, *R v Shivpuri*

[1987] AC 1 and *R v Forbes*

[2002] 2 AC 512 ,

[2002] 1 Cr App R 1 . 24. The earlier authorities are briefly summarised in the speech of Lord Slynn of Hadley in *Forbes* at paragraphs 5-8:- "5. In *R v Hussain* [1969] 2 QB 567, 572 Widgery LJ stressed that the relevant question is whether the accused knows "that what is on foot is the evasion of a prohibition against importation and he knowingly takes part in that operation ... even if he does not know precisely what kind of goods are being imported. It is, of course, essential that he should know that the goods which are being imported are goods subject to a prohibition. It is essential he should know that the operation with which he is concerning himself is an operation designed to evade that prohibition and evade it fraudulently." 6. The correctness of that decision was accepted in *R v Hennessey* (Timothy) (1978) 68 Cr App R 419, 423 where Lawton LJ said: "It matters not for the purpose of conviction what the goods were as long as he knew that he was bringing into the United Kingdom goods which he should not have been bringing in." 7. The decision in *R v Hussain* was also approved by the House of Lords in *R v Taaffe* [1984] AC 539, 547 and in *R v Shivpuri*

[1987] AC 1 . 8. The decision in *R v Taaffe* [1984] AC 539 also accepted that for the purpose of section 170(2) of the 1979 Act a defendant must be judged on the facts as he believed them to be, such matter being an integral part of the inquiry as to whether he was knowingly concerned in a fraudulent evasion of a prohibition on importation." 25. In his speech in *Forbes* , Lord Hope of Craighead explained the background at paragraph 15:- "It is plain that the prohibitions and restrictions would be ineffective unless they were backed up by criminal sanctions in the event of any breach. Their evasion would put at risk the benefits

which they were designed to achieve. Human nature being what it is, there are bound to be those who with a view to profit or for other ill-founded motives will seek to evade them. There is a market for prohibited goods in this country, such as obscene material and controlled drugs, which some individuals are determined to exploit. Others may seek to import the goods for their own use despite, or perhaps even because of, the risk of harm to the wider community. Those involved may include organised gangs or syndicates, and they may go to great lengths to achieve their aims. They commonly resort to the use of couriers, to whom the minimum of information is given to reduce the risk of detection and of tracing the goods back to their source. Sophisticated means of concealment may be employed to ensure that the true nature of the goods is known only to those at each end of the importation process." 26. He went to say at paragraph 19:- "... For over 30 years it has been the law in this country that, if the defendant knows that what is on foot is the evasion of a prohibition or restriction and he knowingly takes part in that operation, that is sufficient to justify his conviction even if he does not know precisely what kind of goods are being imported." 27. After reviewing Hussain and Hennessey, Lord Hope emphasised at paragraph 26 the importance of focussing on the operation rather than merely on the goods:- "It is knowledge of the nature and purpose of the operation which has to be proved, not knowledge of what the goods were which were being brought into this country." (original emphasis) 28. This does not mean that a defendant is deprived of an opportunity to seek to rely on the "Taafe defence", that he believed that he was carrying an article which in reality and contrary to his belief was not prohibited. In the instant case it was open to the appellants to advance the defence that they believed they were carrying money ("non-drug money") the importation of which was not prohibited. Indeed, the appellants did advance that argument but it was rejected by the Jurats who, by their verdict, must have concluded either that they knew they were importing drugs, or knew that they were importing drug money. 29. It may be helpful here to refer to paragraphs 30 - 33 of the speech of Lord Hope in Forbes :- "30. The appellant nevertheless says that he was wrongly convicted because the trial judge ought not to have directed the jury that what the prosecution had to establish was simply that he knew that he was importing prohibited material. He maintains that he should have directed them that the prosecution had to prove not only that he knew that the videos contained indecent photographs but also that they were indecent photographs of children. I would reject that argument. In my opinion the direction by the trial judge was in accordance with the law as laid down in Hussain. 31. It was, of course, open to the appellant to say, if this was the fact, that he believed the videos to contain indecent photographs of adults and that he acted as he did because he believed, contrary to the fact, that they were prohibited. The line of defence which was approved in *R v Taafe* [1984] AC 539 ensures the acquittal of people who genuinely believe that they are importing indecent photographs of adults which are not obscene, when they are in fact photographs of children. But it is for the defendant to put forward that defence. The prosecution does not have to prove what the accused knew the goods were which he was seeking to import knowing that they were prohibited goods. 32. In many cases, where the goods were placed in sealed or concealed packages and there is no evidence from the

accused's own mouth that he knew what was in them, it would be an impossible task for the Crown to have to prove that he knew what the goods were. In this case, for example, the evidence showed that the appellant knew that he was importing video cassettes containing photographic material. But there was no evidence that he ever saw what was in the videos which the third party had handed to him or that he had any other means of knowing precisely what they contained. In my opinion the prosecution would have been bound to fail for lack of evidence if the jury had been given the direction which, although not asked for at the time, the appellant now says they should have been given. 33. The importance of this case lies not in the point which the appellant has raised, which I consider to be without merit, but in the highly damaging effects on the systems of prohibition and restriction on the importation of goods into this country if his argument were to be upheld. ..." 30. If the references to "indecent photographs of adults" and "indecent photographs of children" are changed to "non-drug money" and "drug money", it can be seen that it is still "for the defendant to put forward that defence". And, "the prosecution does not have to prove what the accused knew the goods were which he was seeking to import knowing that they were prohibited goods". 31. Given that the importation of drug money is now prohibited by Article 29 of the Drug Trafficking Offences (Jersey) Law 1988, the Commissioner was quite correct to rule that the necessary mens rea for the offence charged in this case was present if the appellants believed they were importing controlled drugs or drug money but that it was not satisfied if they believed they were importing non-drug money. 32. We were referred to *Barr v Attorney General*

- [2003] JCA 158 where, at paragraph 35, Rokison JA said in relation to a charge under Article 61(2) (b) that the prosecution would have to establish that Barr knew that there were drugs in the oven which he had imported to Jersey in a van. However, that observation has to be understood in the context of the case. Barr asserted that he had been paid £500 to import an oven which he believed to be stolen. He denied knowing that the oven contained controlled drugs. Importation of a stolen oven is of course not prohibited by any statute. Accordingly, if all he thought he was doing was importing a stolen oven, he did not have the necessary mens rea for the offence. However, he was wrongly advised that he had no defence and accordingly pleaded guilty. The issue before the Court of Appeal was whether his appeal against conviction should be allowed on the basis that he was wrongly advised to plead guilty and that, on his version of events, he had a defence. The sole issue in the case was whether or not he knew that there were drugs in the oven and it was in those circumstances that Rokison JA made the comment which he did. The court in that case was not referred to any of the cases which we have cited above because the issue as to whether an intention to import some other prohibited item was sufficient mens rea in relation to a charge concerning the importation of controlled drugs simply did not arise. 33. Advocate Fogarty submits that the consequence of the Commissioner's ruling is that it is not clear whether the appellants were convicted on the basis that they knew they were importing controlled drugs or on the basis that they believed they were importing drug

money. She argues that this uncertainty gives rise to an unfair trial in breach of Article 6 ECHR. She contends that, in order for there to have been a fair trial, the Crown should have charged two counts in the indictment. The first would have been that which was actually charged, namely being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug. The second would also have been under Article 61(2)(b) of the 1999 Law, but would have been an offence of being knowingly concerned in the attempted fraudulent evasion of the prohibition on the importation of the proceeds of drug trafficking. She argues that this would have enabled the basis of the Jurats' decision to be clear. If they found that the appellants knew they were importing a controlled drug, they would convict of the first count; if they found that the appellants believed they were importing drug money, they would convict of the second count; and if they found that the appellants believed that they were importing non-drug money, they would acquit. 34. There are two difficulties with this argument. In the first place, given the Commissioner's ruling on the mens rea of an offence under Article 61(2)(b) (which we have held to be correct) a finding by the Jurats that the appellants believed they were importing drug money would mean that there would have to be a conviction on the first count. It would therefore be impossible in law for there to be a finding of not guilty of the first count but guilty of the second count. Secondly, a conviction on the second count would not reflect the criminality of what actually occurred, namely the importation of cocaine and there is no obligation on the prosecution to bring an additional or alternative charge in those circumstances. 35. In our judgment there was nothing remotely unfair in the conduct of this trial. The indictment did reflect the entirety of the conduct alleged by the prosecution, namely the fraudulent evasion of the prohibition on the importation of a controlled drug and, contrary to Advocate Fogarty's submission, was entirely consistent with Rule 1 of the Indictment (Jersey) Rules 1972. The appellants knew the case they had to meet and they knew the elements (including the mens rea) of the offence with which they were charged. It was for them to decide how to contest the charge and whether to give evidence. It is not uncommon for the verdict of a jury to be consistent with more than one version of the facts. A simple example would be a charge of murder where the defendant says that he should be convicted only of manslaughter, either on the basis of diminished responsibility or on the ground of provocation. Unless the jury explains its verdict, a verdict of manslaughter will leave unresolved the question of whether the jury has decided on the basis of diminished responsibility or provocation. It is possible to think of many other examples of verdicts which are consistent with more than one version of the facts and we have not been referred to any authority which suggests that this gives rise to an unfair trial or to a miscarriage of justice. 36. In the circumstances we dismiss the appeal of Hamilton against his conviction. Appeal against conviction by Owens 37. Advocate Jones did not support Advocate Fogarty in contending that the December 2009 ruling and the consequent direction to the Jurats was wrong in law. He did however adopt her argument that there should have been two counts in the indictment and that the failure to do so had led to an unfair trial. For the reasons given in relation to Hamilton, we dismiss that ground of appeal. 38. Owens sought leave to appeal on two further grounds:-

(i) The sole and decisive evidence against him on the question of mens rea was the hearsay evidence contained in the text referred to at para 13 above. This amounted to a breach of his right to a fair trial under Article 6 ECHR. (ii) The verdict was unreasonable and / or cannot be supported having regard to the evidence in relation to Owens' mens rea . We shall consider each of these in turn.

- (i) Sole and decisive evidence 39. The relevant provisions of Article 6 ECHR provide as follows:-
 "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
3. Everyone charged with a criminal offence has the following minimum rights: ...
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." 40. In *Al-Khawaja and Tahery v United Kingdom*
- (2009) 49 EHRR 1 , the European Court of Human Rights held that there had been a breach of Article 6(3)(d). In each of the two cases before the court on that occasion, the statement of the only eye witness against the relevant defendant was read to the jury and the defendant was unable to cross examine the witness. It was accepted in argument that the evidence in question was the sole or decisive evidence against the relevant defendant. The court endorsed what it had said in the case of *Luca v Italy*
- (2003) 36 EHRR 46 at para 40:- "... The corollary of that, however, is that where a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6." 41. In the case of *R v Horncastle*
- [2010] 3 WLR 47, the Supreme Court has queried whether the decision in *Al-Khawaja* is correct having regard to the detailed statutory provisions which apply in England and Wales. For the purposes of our decision in this case, it is not necessary for us to consider whether *Horncastle* should be followed in this jurisdiction. We therefore proceed on the assumption (without deciding) that *Al-Khawaja* represents the law of this Island. 42. Advocate Jones submitted that the text referred to at para 13 above amounted to hearsay evidence. It sought to prove that Owens was a drug dealer. 43. It is of note that neither counsel objected at the trial to the admissibility of the text on the grounds that it amounted to hearsay evidence. In our opinion they were correct not to do so. In *AG v Kelly* and others
- [1982] JJ 275 at 282, the Royal Court adopted as applicable in Jersey the well known statement in *Subramaniam v Public Prosecutor*

[1956] 1 WLR 965 at 970:- "Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made." 44. Having considered the way in which the text was referred to during the trial, we are satisfied that it was not admitted to prove that Owens was a drug dealer but to cast doubt - considerable doubt

- on the explanation that he and Hamilton honestly believed that they were only importing non-drug money. The text was one of several sent to and received by Owens' phone during the car journey made by the appellants to Weymouth. The fact that a text which referred to drugs was received during the course of the trip to Jersey was highly relevant to the issue of Owens' state of mind. It is capable of being an indicator that, to adopt the submission of the Crown in this appeal, "the issue of drugs was, at the very least, on the appellants' mind" . 45. Advocate Jones submits as an alternative that, even if the evidence was admissible on the basis that it did not amount to hearsay, it should nevertheless have been excluded under Article 76 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 on the basis that the admission of the evidence would so adversely affect the fairness of the proceedings that the court ought not to admit it because the writer of the text would not be called to give evidence. However, no application to exclude the text under Article 76 was made during the trial. In any event, as already stated in relation to the argument on hearsay, the purpose of adducing the text was simply to show that it was received by Owens during the course of the journey. If Owens had given evidence at the trial, he could clearly have been cross-examined about whether he had received and read the text and whether this was consistent with his assertion that he thought he was importing money. Advocate Jones submitted that it was also unfair to admit the text because the text evidence was only disclosed in December 2009. However, this was still some 2½ months before trial and in our judgment no unfairness arises as a result of the delay in disclosure. 46. In our judgment, there was nothing incorrect or unfair in allowing the text to be adduced in evidence at the trial. 47. In any event, the text was not the sole or decisive evidence. Whilst not purporting to be a list of all the possible evidence which would support the finding that Owens had the necessary mens rea to be guilty of the offence, the following was evidence against him:- (i) The car contained cocaine concealed in the tyres. (ii) It was admitted that the extra weight in the tyres would have caused vibration in the vehicle and the faster the vehicle was travelling the greater would have been the vibration. (iii) Owens lied about the purpose of the visit. When first stopped by Customs he said that the purpose of the trip to Jersey was to go fishing. There were two fishing rods in the car to give apparent credence to this lie. Owens repeated the lie at interview when it was put to him that the purpose of the trip was to go fishing and he agreed. (iv) When he arrived in Jersey, the appellants had next to no money, no accommodation booked, no apparent contacts and no return ticket. (v) Owens was familiar with the drugs scene. He admitted taking cannabis on the way down. (vi) At interview, when

asked about the details of the operation, he replied on several occasions "I'm not sure" . He was then asked whether it was that he was not sure or that he just did not want to say, to which he replied "both really". (vii) The texts sent to Owens' phone show concern on the part of the sender as to what Owens was doing. There is reference to being 'stupid', 'dodgy', 'extreme'. In addition there is the text referred to earlier about whether the sender can have a relationship with a drug dealer. 48. In our judgment it was all the circumstantial evidence taken together which could properly lead the Jurats to conclude that the required mens rea was proved to their satisfaction. This is not therefore a case where any one particular piece of evidence was sole or decisive. 49. Accordingly we refuse leave to appeal on this ground. (ii) The verdict was unreasonable and / or cannot be supported having regard to the evidence 50. The relevant part of Article 26(1) of the Court of Appeal (Jersey) Law 1961 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 ..." 51. In *Attorney General v Edmond-O'Brien*

[2006] JLR 133 the Privy Council emphasised the limitations in the scope of this court's function in appeals against conviction in criminal cases. Lord Hoffmann made it clear that in considering whether the verdict "cannot be supported having regard to the evidence" we must be careful not to usurp the function of the Jurats and he quoted, with apparent approval, the passage in the judgment of Lord Goddard CJ in *R v Hopkins-Husson*

[1949] 34 Cr. App. R. 47 at 40:- "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." 52. In our judgment, the cumulative evidence referred to at para 47 above provided ample evidence upon which the Jurats could properly conclude to the criminal standard of proof that Owens had the necessary mens rea for the offence with which he was charged. Advocate Jones argued that, although there was plenty of evidence that the appellants knew they were engaged in a smuggling operation to bring in prohibited goods, this was consistent with a mistaken belief on their part that the importation of money was prohibited. In other words there was evidence to support a Taaffe defence. 53. The difficulty with this is that there was no evidence produced at the trial that either of the appellants thought that the importation of money into Jersey was prohibited. Neither said anything to this effect in interview and both elected not to give evidence at trial. As Lord Hope said at para 31 of his speech in *Forbes* quoted at para 29 above, it is for the defendant to put forward a Taaffe defence. There was no evidence put forward in support of such a defence on this occasion. 54. In summary, having reviewed the evidence produced at trial, we are satisfied that there was ample evidence upon which the Jurats could properly convict and their verdict cannot be said to be unreasonable. Accordingly, we dismiss the application for leave to appeal on this ground. Appeals against sentence 55. The appellants were convicted of the fraudulent

importation of 984 grams of cocaine with an estimated street value of £79,000 and a wholesale price of £64,000. The Royal Court was informed that this was the largest seizure of cocaine ever made in the Island. In moving its conclusions before the Royal Court, the Crown applied the Rimmer guidelines (Rimmer v AG

[2001] JLR 373) which provide that, for 400 grams or more of a class A powder drug, the appropriate starting point is one of 14 years upwards. In view of the fact that the amount of cocaine involved in this case was approximately 1kg, the Crown took a starting point of 15 years. Despite the fact that there was no mitigation for a guilty plea, a considerable discount was allowed to reflect the youth of the appellants and the other mitigation available, so that the Crown moved for a sentence of 10 years youth detention. 56. In mitigation before the Royal Court, as well as referring to conventional mitigation such as youth, character etc both counsel concentrated substantially on what they saw as the procedural deficiencies in the proceedings. They pointed out that it was not possible to say from the verdict of the Jurats whether they had found that the appellants knew they were importing a controlled drug or whether they believed they were importing drug money. Advocate Fogarty urged that this was an extraordinary circumstance which should lead to a further reduction in sentence. Advocate Jones argued that, if there had been a two count indictment as referred to earlier and the Jurats had convicted only of the second count (i.e. of attempting to import drug money) the maximum sentence would have been 7 years pursuant to Article 61(3) and this should be taken into account. 57. The Superior Number expressly recognised, in paragraph 5 of its judgment, that because no reasons were given for the verdict, the appellants did not know whether the Jurats were sure that they knew that it was cocaine, some other drug, or drug money. 58. At paragraph 8 of the judgment, the question of erroneous belief is addressed:- "The defendants' erroneous belief, communicated to the police and to the Probation Department, that they were importing money, does not, in the view of this Court, comprising as it does the Jurats who sat at the trial, either as a matter of principle or on the facts of this case, make a difference to the determination of the appropriate sentence." 59. It follows, on our reading of this paragraph, that the Superior Number was accepting, at least for the purposes of considering sentence, that the appellants did in fact hold that erroneous belief, but that there was no difference of any significance (again for sentencing purposes) between the appellants importing a controlled drug knowing it was a controlled drug and their importing a controlled drug believing it to be drug money. 60. The Superior Number went on to determine that, having regard to the appellants' involvement, a lower starting point of 14 years could be taken. It then determined that in view of their youth, the support of their mothers, the references and the fact that they were two naïve young men who had been cynically used by others, the sentence could be reduced as a matter of leniency to one of 8 years youth detention. 61. On behalf of Hamilton, Advocate Fogarty has renewed before us her criticism that, as a result of the direction given in the summing up, the appellants do not know whether they have been convicted and sentenced on the basis that they knew they were importing a controlled drug or on the basis that they believed they

were importing drug money. She said that Article 6 ECHR applies to the sentencing process just as much as to any other part of the trial and that to sentence on an unknown factual basis means that the Royal Court failed to give adequate reasons for its decision in breach of Article 6 and had also therefore failed to announce the decision in public as required by Article 6. 62. She also referred to Article 7 ECHR the relevant part of which provides:- "1. No-one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed ." (emphasis added) She submits that the decision of the Superior Number has resulted in the retrospective application of the Rimmer guidelines to what was in effect an offence of attempting to import drug money. She says that if this was to be done at all, it should have been done by convening a special sitting of the Court of Appeal (as in *Campbell v AG*

[1995] JLR 136) where due and proper consideration could have been given to the point. She argued that, if the legislature had considered that there existed no difference between the importation of drug money and importation of controlled drugs, the separate provisions of the Misuse of Drugs (Jersey) Law 1978 and the Drug Trafficking Offences (Jersey) Law 1988 would not have been enacted as they were with different penalties. She pointed out that *Campbell* had envisaged that an erroneous belief as to the exact nature of the imported drug might in exceptional circumstances amount to a mitigating factor. She submitted that, because the factual basis of the Jurats' decision was unknown, it was not possible to know whether there might be exceptional circumstances in this case by reason of an erroneous belief that it was drug money rather than cocaine which was being imported. She further submitted that, in any event, there was a difference between the two and that importation of a controlled drug with a belief that it was drug money was less serious than importation of a controlled drug knowing that it was a controlled drug. 63. While expressing his submissions somewhat differently, Advocate Jones essentially made similar points on behalf of Owens. He argued that there should have been a two count indictment as referred to earlier and the court could then have sentenced on the appropriate facts depending upon the Jurats' verdict. He argued that the Superior Number had been forced to pass sentence on the first basis contained in the direction, namely that the appellants had known they were importing a controlled drug. He said that this was in breach of Article 6 ECHR because it was procedurally unfair to proceed in this way when it was in fact not known whether the Jurats had so found or whether they had found that the appellants believed they were importing drug money. He said that in such circumstances, a court must sentence on the basis most favourable to the accused. In this case, if the appellants had been convicted of attempting to import drug money, the maximum sentence would have been 7 years (see Article 61(3) and they should have been sentenced on that basis. 64. In our judgment, there is no question of the procedure in this case having led to a breach of Article 6 or Article 7 ECHR. In relation to Article 6, we accept that it applies to the sentencing process, but the Superior Number stated specifically that it

considered that the erroneous belief of the appellants made no difference to the level of sentence. Its reasoning was entirely clear and was delivered in public. As to Article 7, it is frequently the case that a sentencing court has to decide for the first time what level of sentence is appropriate for a specific set of facts which have not arisen before. That is what occurred here. The Superior Number had to decide whether an erroneous belief on the part of a courier that he is importing drug money - whereas he is importing a controlled drug - is a mitigating factor and should lead to a lesser sentence than that appropriate for a courier who knows that he is importing a controlled drug. There is no question of a heavier penalty being imposed than the one that was applicable at the time the criminal offence was committed. The maximum sentence for the offence of importing a controlled drug is set out in Article 61(4) of the 1999 Law and that is applicable to the appellants in this case. 65. Despite the complex and wide ranging submissions of counsel, the issue before the Superior Number and for this court is a short one. The Superior Number made it clear that it considered that the appellants' erroneous belief that they were importing money - that must mean drug money given the Jurats' verdict - made no difference to the appropriate sentence. The issue is whether that was correct. If it was, then no unfairness has arisen because it does not matter for sentencing purposes what basis the Jurats convicted upon. If, on the other hand, that is incorrect, and an erroneous belief that one is importing drug money rather than a controlled drug is a mitigating factor which should lead to a lesser sentence, then the appeal should be allowed and a lesser sentence passed. 66. We turn therefore to consider that issue. 67. In England and Wales it has long been the case that an erroneous belief by a defendant that he is importing a drug of a less serious category than the one which he is in fact importing is a mitigating factor. See for example *R v Bilinski*

[1987] Cr. App. R. (s) 360. 68. In this jurisdiction a different approach has been taken. As the court said in *Campbell* at 141 and repeated in *Rimmer* at para 14, Jersey is a separate jurisdiction which is free to set its own sentencing levels as it thinks fit to meet the social and penal needs of the Island. In relation to this particular issue the five judge Court of Appeal in *Campbell* said this at 145:- "We turn now, as requested by the Attorney General, to deal with a number of subsidiary points. First, we are asked to consider the extent to which an erroneous belief in the identity of a drug in the possession of an offender can be a mitigating factor. In *R v Bilinski* the English Court of Appeal held that it was relevant to punishment and that 'the man who believes he is importing cannabis is indeed less culpable than he who knows it to be heroin' (9 Cr App R (S) at 363). The extent to which the punishment should be mitigated would, however, depend upon all the circumstances, amongst them being the degree of care exercised by the defendant. In the case of *Campbell*, one of the present appellants, the Royal Court declined to follow *Bilinski* and decided that in general an erroneous belief should not be held to be a mitigating factor (1994 JLR N - 12). The Royal Court expressly stated however that it was not laying down a rigid rule. It acknowledged that there could be exceptional circumstance which would entitle it to consider the effect of a person's belief on the proper sentence. In our

judgment, a courier who knowingly transports illegal drugs must be taken to accept the consequences of his actions. As the Attorney General put it, the moral blameworthiness is the same, whatever the nature of the drugs transported. Furthermore, viewed from the perspective of the community, the evil consequences flowing from the dissemination of Class A drugs are not mitigated in the slightest by the erroneous belief of the courier that he was transporting a Class B drug. There may be very exceptional circumstances in which a genuine belief that a different drug was being carried might be relevant to sentence. But in general we endorse the Royal Court's view in the case of Campbell that an erroneous belief as to the type of drug being carried is not a mitigating factor." Campbell has been followed and applied in Rimmer . 69. In our judgment, the Royal Court in this case was correct to find that the same principle applies where the courier believes he is importing drug money (rather than a Class B drug) whereas he is in fact bringing in a Class A drug. In the first place the moral blameworthiness is the same. As Lord Hope spelt out in para 15 of his speech in Forbes (see para 25 above), those involved in organising the importation of controlled drugs often give the minimum of information to couriers and will use sophisticated means of concealment to ensure that the true nature of the goods is known only to those at each end of the importation process. We would add that such organisers will also often tell the courier that the goods fall into a less serious category than they in fact do in order to induce the courier to undertake the smuggling operation. 70. In our judgment, a courier who agrees to import prohibited goods without knowing their exact nature and relying entirely on verbal assurances from the organisers of a criminal smuggling operation must be taken to accept the consequences of his actions if the goods turn out to be of a more serious category than he believed. He has put himself in a position where he is importing whatever the organiser has chosen to conceal. Furthermore it would in any event be quite impossible in most cases to test the assertion of a courier as to his belief as to the exact nature of the goods. That indeed was one of the reasons given by Lord Hope for maintaining the rule that there is sufficient mens rea for a conviction if the defendant knows he is importing prohibited goods even though he does not know the exact category of prohibited goods (see paras 24 as well as 32 and 33 of his speech). The point seems to us equally applicable when considering sentence. 71. Secondly, as stated in Campbell , viewed from the perspective of the community, the evil consequences flowing from the dissemination of Class A drugs in the Island are not mitigated in the slightest by the erroneous belief of the courier that he was transporting drug money rather than Class A drugs. In any event the transportation of drug money is an integral part of the drug trade in that the purchase price and sale proceeds of drugs need to be transported to and from the places of purchase and distribution if the trade is to succeed. 72. We agree that, following the reasoning in Campbell , there may be very exceptional circumstances in which a genuine belief that drug money rather than controlled drugs is being carried might be relevant to sentence. An example might be where there is convincing evidence that the courier took every possible step - e.g. by inspecting the goods as they were concealed - to ensure that the goods were of the type which he had been assured they were but was then hoodwinked by a subsequent switching of the goods. 73. There were no such

exceptional circumstances in this case. This was a typical example of a courier placing himself entirely in the hands of the organiser and agreeing effectively to import whatever the organiser chose to conceal in the tyres. As Hamilton said in interview, he did not see the items being put in the tyre and did not think of checking to see whether they contained cash or not. He told the Customs officers "I didn't ask any questions. You don't ask questions." 74. Advocate Fogarty argued that there were exceptional circumstances because of the unsatisfactory nature of the procedure which had been followed in this case resulting in the appellants not knowing the basis upon which they had been convicted. As we have already stated, there was in our judgment nothing unsatisfactory about the procedure and the Royal Court sentenced on the basis that the appellants did hold an erroneous belief as to the nature of the goods but that this made no difference for sentencing purposes. We have found their decision to be entirely correct in this respect. 75. Advocate Fogarty also argued that, because the issue of whether an erroneous belief that a courier is importing drug money rather than drugs has not been considered by the court before, it should have been referred to a specially constituted court as occurred in Campbell . As we have already observed, it is frequently the case that a sentencing court has to deal with a factual situation for the first time. It is a matter entirely for this court as to whether to refer the matter to a five judge court or not. We see no need to do so in this case. 76. Advocate Jones submitted that the appellants should have been sentenced as if they had been convicted of an offence of attempting to import drug money. This would have resulted in a maximum sentence of 7 years youth detention pursuant to Article 61(3). But that is to ignore the fact that what the appellants carried out and were convicted of was the importation of cocaine, with the result that the maximum sentence is as laid down in Article 61(4)(a), namely life imprisonment. We have to say that we did not follow his argument that the Royal Court was forced to pass sentence on the basis that the appellants knew they were importing a controlled drug. Paragraph 5 of the Royal Court's judgment, quoted at paragraph 58 above, makes it clear that the court was doing exactly the opposite. 77. In summary, when a person is convicted of having been knowingly concerned in the fraudulent evasion of the prohibition on the importation of a Class A controlled drug, he falls to be sentenced in accordance with the Rimmer guidelines. Save in very exceptional circumstances, an erroneous belief that he was importing a Class B or C drug or drug money is not a mitigating factor. 78. Advocate Jones accepted that, assuming Owens fell to be sentenced in accordance with the Rimmer guidelines, he could not properly criticise the sentence of 8 years as manifestly excessive. Advocate Fogarty did not concede this point on behalf of Hamilton but was unable to put forward any substantive reason for criticising the sentence assuming that the Rimmer guidelines applied. In our judgment, the starting point of 14 years cannot be criticised and, given that the appellants pleaded not guilty, a deduction of 6 years to reflect the available mitigation, including in particular their youth, could be said to be generous and the resulting sentence cannot be categorised as being manifestly excessive. Leave to appeal against sentence is therefore refused in both cases.

Conclusion

79. It may be helpful if we say a few words about the procedure to be followed where the verdict of Jurats or a jury is consistent with more than one version of the facts. Where it appears to the sentencing court that it would make no difference to the sentence whichever version was to be the basis upon which sentence was to be passed, that court does not have to decide the issue and can proceed to pass sentence. However, where the adoption of one version rather than another would make a difference to sentence, consideration must be given by the sentencing court to the appropriate procedure to be followed. 80. In England and Wales, the position is clear. The trial judge, who will have sat through the trial before the jury and will be passing sentence, is entitled to form his own view as to the facts of the offence established by the evidence and to sentence accordingly. He is not obliged to accept the version of events most favourable to the defendant consistent with the jury's verdict but in making his assessment of the facts, he should give the offender the benefit of any doubt that there might be. 81. There is difficulty in transposing this approach to Jersey because, under the system in this Island, it is the Jurats who pass sentence, not the trial judge. If sentence is passed by the Inferior Number and the two Jurats who form the sentencing court are the same Jurats as sat at trial, it may be possible to transpose the English system, with the sentencing court giving a short explanation as to the factual basis for sentencing on the basis of the finding of the Jurats. However, it may be that different Jurats are sitting on sentence in the Inferior Number, or that sentence is to be passed by the Superior Number which will contain a number of Jurats who did not sit at trial or that sentence is to be passed following the verdict of a jury. 82. It is possible for a jury or Jurats to be asked, when returning a verdict, to answer a supplemental question as to the basis of their verdict. Thus, in England and Wales, juries are often asked, when they return a verdict of manslaughter on a charge of murder, to indicate whether they have found this on the basis of diminished responsibility or provocation if both defences are being run. Although, in that jurisdiction, judges are not generally encouraged to ask supplemental questions of juries in cases other than murder / manslaughter, it is sometimes done. We note that in the recent case of *R v Mendez*

[2010] 3 All ER 231, the trial judge left to the jury the possibility of convicting one of the accused of murder either on the basis that he was the person who stabbed the deceased or on the basis that he was a secondary party by way of joint enterprise in that he was one of the group who attacked the deceased. The judge warned the jury in advance that, if they convicted that particular accused of murder, they would be asked a supplemental question as to whether the conviction was on the basis that the accused inflicted the fatal injury or on the basis that he was a secondary party. The jury answered that they convicted him as a secondary party. There was no suggestion in the Court of Appeal that this was an inappropriate procedure to have followed. 83. In our judgment, given the different system in Jersey, this is a practice which could perhaps be followed more often than it is in England and Wales. We suggest that, if during the course of a trial, the judge or counsel identifies that the verdict of the jury or Jurats may be consistent with more than one

version of the facts and this may be relevant to sentence, consideration should be given to asking a supplemental question of the fact finding tribunal in order to establish which version of the facts has been accepted. Where this is done, the question should be a reasonably simple one and should be formulated before the tribunal retires so that it may be considered whilst the verdict is reached. It would not be appropriate to spring a supplemental question upon the jury or Jurats following their verdict (see Archbold (2010 Edition) para 5 - 71). Where such a question is posed and answered, sentence must then be passed on the basis of the version of the facts identified as having been found by the jury or Jurats. 84. If this procedure is not followed and the verdict of the jury or Jurats is consistent with more than one version of the facts, there may be circumstances in which it is appropriate to hold a Newton hearing e.g. if no evidence has been called touching on an issue which is important for sentencing: see *R v Finch*

- [1993] 14 Cr. App. R. (S) 226. However, it would not be proportionate or justifiable to have in effect a re-run of the trial before the sentencing court in order to resolve the question as to which version of events should be accepted. In such circumstances, if the Crown has not been alert to suggest the procedure outlined in the preceding paragraph, the sentencing court must proceed on the version of events most favourable to the defendant. *Authorities Customs and Excise (Jersey) Law 1999. Misuse of Drugs (Jersey) Law 1978. R v Taaffe [1984] Cr. App. R. 301. R v Hussain [1969] 53 Cr. App. R. 448. Drug Trafficking Offences (Jersey) Law 1988. R v Hennessey [1979] 68 Cr. App. R. 419. R v Taaffe [1983] 77 Cr. App. R. 82. R v Shivpuri*
- [1987] AC 1 . *R v Forbes*
- [2002] 2 AC 512 ,
- [2002] 1 Cr App R 1 . *Barr v Attorney General*
- [2003] JCA 158 . *Indictment (Jersey) Rules 1972. Al-Khawaja and Tahery v United Kingdom*
- (2009) 49 EHRR 1 . *Luca v Italy*
- (2003) 36 EHRR 46 . *R v Horncastle [2010] 3 WLR 47. AG v Kelly and others [1982] JJ 275. Subramaniam v Public Prosecutor*
- [1956] 1 WLR 965 . *Police Procedures and Criminal Evidence (Jersey) Law 2003. Court of Appeal (Jersey) Law 1961. Attorney General v Edmond-O'Brien*
- [2006] JLR 133 . *R v Hopkins-Husson [1949] 34 Cr. App. R. 47. Rimmer v AG*
- [2001] JLR 373 . *Campbell v AG*
- [1995] JLR 136 . *R v Bilinski [1987] Cr. App. R. (s) 360. R v Mendez*

[2010] 3 All ER 231 . Archbold (2010 Edition). R v Finch [1993] 14 Cr. App. R. (S) 226. Page Last
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