

JERSEY / JUDGMENT

Harrison v AG [2001] JCA 214 (26 October 2001)

[2001] JCA 214

COURT

COURT OF APPEAL

BEFORE

R. C. Southwell, Esq., Q. C., President;

P. D. Smith, Esq., Q. C., and

M. G. Tugendhat, Esq., Q. C.

Julie Marie

HARRISON

-v-

The Attorney General

Application for leave to appeal by

Julie

Marie HARRISON

against

conviction

, on count 1, on 17

th

May, 2001 by the Inferior Number of the Royal Court, following a not guilty

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October, 2001.

Before:

R. C. Southwell, Esq., Q. C., President;

P. D. Smith, Esq., Q. C., and

M. G. Tugendhat, Esq., Q. C.

Julie Marie

HARRISON

-v-

The Attorney General

Application for leave to appeal by

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Marie HARRISON

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conviction

, on count 1, on 17

th

May, 2001 by the Inferior Number of the Royal Court, following a not guilty

plea to:

1 count of:

possession of a controlled drug with
intent to supply, contrary to Article 6(2) of the
Misuse of Drugs (Jersey)
Law 1978

:

count 1: heroin;

1 count of:

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

:

count 2: heroin.

Leave to appeal was refused by the
Deputy Bailiff on 16

th

August, 2001; and on 21

st

August,

2001, the Appellant exercised her entitlement, under Article 39 of the Court of
Appeal (Jersey) Law, 1961, to renew her application to the plenary Court.

Advocate R. Tremoceiro for the Appellant;

A. D. Robinson, Esq., Crown Advocate.

JUDGMENT

TUGENDHAT JA: 1. This is an application for leave to appeal against conviction only, not against sentence. On 17 May 2001 the applicant was convicted in a trial before the Inferior Number on the first count of an indictment containing two counts. The conviction was for possession of heroin with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law 1978. The incident related to a small amount which was found at Her Majesty's Prison, La Moye, on 29 June 2001 during the afternoon when the applicant was visiting. 2. The applicant was sentenced to 240 hours Community Service. The grounds of the appeal which she applies for leave to make are that the verdict was unreasonable and could not be supported having regard to the evidence, and that it should be set aside on the ground of a wrong decision on the question of law. 3. The test to be applied is set out in Article 25(1) of the Court of Appeal (Jersey) Law 1961, which provides that: 'the Court 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 ... on the ground of a wrong decision of any question of law, or that, on any ground, there was a miscarriage of justice ... 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 if it considers that no substantial miscarriage of justice has actually occurred.' 4. The evidence before the Court was mainly that of Prison Officers. The heroin in question was a small quantity wrapped in cling film. The gist of the case for the Crown was that the applicant tried to pass this wrap of heroin to her

boy friend whom she was visiting, but that she dropped it, and it was picked up from the chair on which she was sitting. 5. Prison Officer Brown said that he had searched the visits room before the commencement at 1.30 pm that day of the first visitor session, and the area was clear. In particular, he had checked the two seats on which subsequently the applicant and the inmate in question came to be seated. There was also evidence that the visits room had been checked at the end of the last visit on the previous day, and it had then been locked up. 6. It is necessary to recite in some detail the following extracts from the transcript which relate to the way the case was put on behalf of the Crown at the beginning, and at the end of the proceedings, together with some parts of the evidence, and the summing up. The Evidence and Other Mentions of what was heard and seen Crown Opening p30 '... accused dropped this wrap of heroin, which happened to fall onto her chair ... Brown ... will testify that this caught his attention, and that he picked up the wrap ... Mr Brown in chief p44 'CROWN ADVOCATE (...) what did you see happen? P O BROWN (...) they proceeded to sit down and then just general chat, and then I heard the object land on the chair, I looked at the object and stepped forward, picked it up, and showed it to Mr Clark (...) CROWN ADVOCATE (...) You say you heard an object land on the chair. P O BROWN On the chair. CROWN ADVOCATE ... where were you when you heard that? P O BROWN At my post. At that seat (...) I was standing at that time (...) CROWN ADVOCATE (...) how far would you say you were from the seat in question? P O BROWN 3 to 4 feet (...)' p45 'COMMISSIONER HARMAN (...) when were you 3 to 4 feet away? P O BROWN When I heard the object land on the chair (...) CROWN ADVOCATE You say that she was sitting when you heard this, and you just said that it fell on to the chair that she was sitting on, did you see it land on the chair? P O BROWN No I heard it ... heard it ... it sort of caught my attention and as I turned, because the seat is a type of bucket effect ... CROWN ADVOCATE Yes. P O BROWN I just heard it slide. CROWN ADVOCATE You saw it slide down? P O BROWN Yes (...) p48 'CROWN ADVOCATE (...) you say you saw this object slide down the side of the chair, which side of the chair was that left or right ... P O BROWN It would be ... (...) It would be the left hand side of the chair (...) Mr Brown cross-examined p57 'ADVOCATE TREMOCEIRO (...) a good number of visitors came in, possibly 12 inmates there as well, everyone was talking, now all this makes your statement that you heard a wrap, a tiny piece of plastic drop, sounds strange to me, can you see why? P O BROWN Yes I can see why Sir, yes' p61 'ADVOCATE TREMOCEIRO I think you said that you didn't see the wrap fall, that's correct is it? p62 P O BROWN Yes, Sir. ADVOCATE TREMOCEIRO And you maintained that despite the atmosphere which may have been noisy, you heard a wrap fall on a seat... P O BROWN I heard something. ADVOCATE TREMOCEIRO Something fall ... P O BROWN Hit the chair, yes Sir. ADVOCATE TREMOCEIRO Hit the chair, and that you immediately looked at it, and I think you said it was sliding down P O BROWN With the seat being a bucket type effect I seen it moving down the side to where her bottom would be. (...) ADVOCATE TREMOCEIRO Was the wrap touching her? P O BROWN I don't think so, no. It was lying at the side (...) p63 'ADVOCATE TREMOCEIRO So not having seen the wrap fall, you don't know where it fell from? P O BROWN No Sir (...) Mr Brown re-examined p71 'CROWN ADVOCATE (...) Now I think that you have already testified that at the time that you heard the noise, and you saw the object sliding down that chair on the left side of the accused (...) they were both seated, yes? P O BROWN Correct, Sir.' Miss Harrison cross-examined p167 'CROWN ADVOCATE (...) if you recall his evidence he said he saw this object

slipping down the side. THE APPLICANT Well, if it slipped down the side it would have ... I would have felt him pick it up then wouldn't I? p174 'THE APPLICANT (...) He said he heard ... I mean it was hustle and bustle in there and everything, you couldn't hear, you couldn't hear .. you couldn't hear my keys drop on the floor and they're a great big bunch of keys, let alone a little piece of paper that is meant to be the size of my thumb nail. CROWN ADVOCATE Yes, no.. no.. Im just asking questions that's all...' Crown Advocate's Closing

Submissions

p188 '(...) The most important and the most compelling feature of his evidence in my submission relates to the fact that he said he heard something drop on the chair and then most particularly he saw it sliding down the side. (...) Now, he said that's what he saw[,] it was sliding, it was moving. Now that's the most compelling and, indeed in my submission, quite graphically .. (indistinct).. so I asked how close he was when he saw that. He said he was about 3 or 4 feet away. Now, if that evidence is found to be compelling, and obviously it does rather undermine the suggestion that this wrap of heroin might have been left there by somebody before. He said he heard something, and more than that he said he saw it sliding, it suggests it dropped and it dropped then (...) ' Advocate Tremoceiro's Closing Submissions p196 'Mr Brown was in attendance in a room full of inmates and visitors and having been pre-warned about Miss Harrison by Mr Truscott due to her demeanour he heard the wrap, the size of a thumb nail and enclosed in cling film, fall and pick[ed] the item up (...) No one saw the wrap on her. No one saw the wrap falling from or being thrown by her. The wrap was found on the seat she was occupying p197 'The Prosecution said in this respect "Ah, but Mr Brown heard it drop and it was still sliding down when he saw it". The improbability of Mr Brown having heard a minute wrap of paper wrapped in cellophane drop from less than a foot onto a seat in a crowded, bustling, noisy room, is patently obvious and the officer himself acknowledged that it sounded strange'. p199 'He saw the wrap slide down, he says, it was a bucket type plastic seat' Summing up p205 '(...) And then he heard an object land on the chair she was sitting on. He then stepped forward, picked it up and showed it to, or handed it straightaway, to Clark. He said he was only three or four feet away when he heard the object drop. He heard it not saw it. And he saw it slide down the left side of the chair into the bucket. And Miss Harrison apparently did nothing (...) He described the visitors' room as being fairly full with about 12 inmates and their visitors, and possibly children about. And you will remember how he accepted what was put about it being a bustling, noisy, atmosphere. Nevertheless, he insisted that he had heard that little wrap drop. He did not see it drop'. 7. The Crown do not challenge the accuracy of the transcript. The passage at p45 is set out in para 10 of the Applicant's contentions. 8. The Jurats were invited to come to the conclusion they did on the basis of PO Brown having seen the wrap sliding. That is the evidence that the Crown put in the forefront of its case in Closing Submissions. But the manner in which that evidence was put before the court is unsatisfactory: 9. The point made in the Applicant's contentions is that in cross-examination Defence Advocate failed to challenge the evidence. In his Conclusions at para 11(iv) Advocate Tremoceiro says this: 'The witness was not cross-examined on this point due to inadvertence on the part of defence counsel. In this respect the Applicant contends that this

court should nevertheless take notice of the evidence given by Mr Brown to the police and consider it together with all the other evidence'. 10. However, there are a number of other points in which the evidence in question was unsatisfactory. 11. First, that evidence was adduced in chief by a leading question which was completely different from the immediately preceding answer. The exchange was, we repeat, as follows : 'CROWN ADVOCATE (...) did you see it land on the chair? P O BROWN No I heard it ... heard it ... it sort of caught my attention and as I turned, because the seat is a type of bucket effect ... CROWN ADVOCATE Yes. P O BROWN I just heard it slide. CROWN ADVOCATE You saw it slide down? P O BROWN Yes'. 12. There had been no previous suggestion that Mr Brown saw it slide, as opposed to seeing it on the chair. What PO Brown had said to the police in his statement dated 29 June 2000 was : 'As [the Applicant] and [the inmate] parted and [the Applicant] sat back in her chair, I heard a noise that would indicate to me that something had dropped on to [the Applicant's] chair... I was standing at the time and I clearly saw a small plastic wrap lying on [the Applicant's] chair right beside her and it was at this point that I took the item'. Both advocates explained to us, and we accept, that Crown Advocate did not intend to invite the witness to give evidence in this way. As is well known to the Court, the acoustics in this temporary court room are not good. The leading question arose from a misunderstanding of what the witness had said in reply to the preceding question. 13. In addition to this point, there is the fact that Advocate Tremoceiro compounded the error by putting a leading question to PO Brown on the very same point. Mr Brown only said again that he saw the wrap slide in response to that leading question (p62). 14. Defence Advocate did not object to the leading question put by the Crown Advocate. Nor did he at any time comment that the evidence had been introduced by a leading question. He too had had difficulty in hearing the witnesses' answers. 15. The summing-up at p205 refers to the evidence with some caution. But there is no reference to the fact that evidence as to what Mr Brown saw had been introduced by leading questions. And there is no warning to the jurors in the summing up as to the weight to be attached to the evidence in those circumstances. 16. Archbold 8-72 says the answers to leading questions are not per se inadmissible, citing *Moor v Moor*

[1954] 1 WLR 927, although in that case Evershed MR refers to a question 'which was in a form so leading as to be quite inadmissible' (p928b). *R v Wilson*

(1914) 9 Cr. App. R.124 CCR also seems to support the view that answers obtained by leading questions are not evidence. 17. We conclude that Crown Advocate was in error in asking the leading question at p45 and then persisting in it at p48 and in re-examination at p71, and finally in putting the answer at the forefront of his case in his Closing Speech at p188. 18. We also conclude that it was a serious error of judgment on the part of Defence Advocate first, not to object to, or comment upon, the leading nature of the question that adduced the evidence, and, second, then himself to compound the error by putting the same leading question in cross-examination on the point, instead of a challenge. 19. Once the evidence had been given, one possible course would have been for the Jurats to have been warned to take particular care before relying on that evidence, or to treat it as inadmissible. But we do not think that the defect would have been cured in this case, even if such a direction had been made. It is impossible to say that the Jurats must have

convicted on the other evidence before them. 20. It follows that the verdict is one which cannot be supported having regard to the evidence, and there was a substantial miscarriage of justice. The application must be granted and the appeal allowed. It also follows that there can be no further proceedings in relation to the second court. That would stand or fall on the basis of the same evidence as to possession. Authorities R.-v-Kamar (14 th May 1999) Times Law Reports. Taylor on Appeals (2000 Ed'n): pp.307-310. Archbold: Chapter 8: Questioning of Witnesses: pp. 1082-3. Wilson, alias Whittingdale (1914) 9 Cr. App. R. 124. Moor-v-Moor [1954] 1 WLR 927 C. A. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 26 October 2026 · Esheria