

JERSEY / JUDGMENT

Hume -v- AG 27-Jan-2006 [2006]

JCA 013 (27 January 2006)

[2006] JCA 013

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COURT OF APPEAL 27 January 2006 Before: Sir John Nutting, Bt., Q. C., President; P. D. Smith, Esq., Q. C., and; D. A. J. Vaughan, Esq., C. B. E., Q. C. Gareth Paul Hume -v- The Attorney General Application for leave to appeal against the conviction by the Inferior Number of the Royal Court on 27 th October, 2005 on the following charges: 2 counts of: Attempting to incite another to commit an offence under the Misuse of Drugs (Jersey) Law 1978 contrary to Article 19(4) of the said Law. Advocate S. A. Pearmain for the Applicant A. J. Belhomme, Esq., Crown Advocate

JUDGMENT

THE PRESIDENT: 1. On 27 October 2005 the Applicant was found guilty of one charge of attempting to incite Bridgette Allan to supply him with heroin and a second similar charge in relation to cocaine, both charges contrary to Article 19(4) of the Misuse of Drugs (Jersey) Law 1978. 2. On 7 November 2005 he filed notice of his intention to apply for leave to appeal against his conviction. 3. The circumstances of the offences were as follows. On 10 April 2004 Jeffrey Carter, who subsequently pleaded guilty to charges reflecting his criminal activity, imported into Jersey 1,489 grammes of diamorphine and 970 grammes of cocaine. The diamorphine had a street value of between £444,000 and £666,000 and the cocaine had a street value of about £77,000. On 11 April 2004 a carrier bag containing the drugs was delivered to a flat belonging to Mrs Allan at Melrose Cottages, Le Vier Mont, Old Trinity Hill, St Helier. Mrs Allan later pleaded guilty to possessing these drugs with intent to supply. The package was received by her daughter, Brooke, whom her mother had telephoned and asked to take delivery of the package. Miss Allan, who was subsequently acquitted, placed the package in a cupboard in the flat. Thereafter the package was stored in a garden shed at the rear of the flat where the police discovered it when they searched the flat later that evening. 4. On 11 April 2004 at 12.48 hours Gary Gallagher, an organiser of the importation, sent a text message about the drugs to Mrs Allan's mobile telephone. The message stated " dont touch that Bridge and as much as u know its a guys tools " 5. On the same day at 19.13 hours Mrs Allan received a telephone call on her mobile telephone from the Applicant's mobile, number 07797 811599. The call lasted 42 seconds. Mrs Allan gave evidence at the Applicant's trial that the caller was male and that he had indicated that he would come round soon to collect the " tools ". 6. The police arrested Mrs Allan in the course of 11 April. After the arrest, telephone calls were made from the Applicant's mobile to Mrs Allan's mobile at 22.30

hours and 22.35 hours. The caller was unable to contact Mrs Allan as she was then in custody. In addition, at 22.32 hours, after the first unsuccessful attempt to call Mrs Allan, a text message was sent from the mobile to Mrs Allan's mobile. The message stated: "Its t's mate any chance of grabbing me tools now?" 7. On the following day, Easter Monday, there were ten telephone calls between 11.17 hours and 15.14 hours from the same mobile to Mrs Allan's mobile but none of them were answered as Mrs Allan was, of course, in custody. 8. The trial of the Applicant in October 2005 was the second occasion on which he had been tried on this indictment. As a matter of record he had been convicted of both charges in March 2005. He appealed to this Court (Southwell, Vaughan, and Lord Hodge JJAs) in respect of those convictions. The Court allowed his appeal and ordered a re-trial on both charges. The ground of appeal on which the Applicant succeeded related to the non-disclosure of material which had been provided to his Advocate shortly before the appeal was heard. The Court held that the Applicant had been disadvantaged by the failure of disclosure at the time of the trial and concluded that the conviction recorded at the March trial could not stand. 9. Advocate Pearmain did not make a submission of no case to answer before the Bailiff nor did she call the Applicant or any witnesses on his behalf, but she comes before us to apply for leave to appeal on the grounds that the verdict was one which no reasonable tribunal could have reached on the evidence before it. In particular she asserted that the mere fact that the mobile 07797 811599 belonged to the Applicant was no evidence that he had used it to make the incriminating contact, and attempted contact, with Mrs Allan on 11 and 12 April. Mrs Pearmain submitted that without more, there is no presumption of use from the fact of ownership. 10. It is unnecessary for this Court to decide whether there is such a presumption because in this case there was a significant quantity of evidence to show that the mobile was in the possession of the owner of the mobile for the whole period. We have analysed the evidence which was before the Royal Court. That evidence consisted, inter alia , of a long document headed "Admissions" which included the fact that the Applicant was conceded to be the owner of the relevant mobile from which the calls were undoubtedly made. The times of these contacts and attempted contacts were as indicated above i.e. at 19.13 on 11 April when an unknown male informed Mrs Allan that he would call her to collect " the tools ", a call at 22.30 which Mrs Allan did not answer constituting a missed call, a contact at 22.32 when Mrs Allan's mobile received the text referring to the collection of " the tools" and finally an attempted contact at 22.35 which Mrs Allan also failed to answer, thereby constituting another missed call. 11. The Royal Court also had the advantage of the records of analysis of the SIM card of the Applicant's mobile. These show that his speed dial memory included 167 numbers (exhibit JET1 page 27-33) and that there were 362 names in an alphabetical memory bank with both mobile and/or landline numbers attached (exhibit JET1 pages 52-59). 12. An analysis of the numbers contacted by the same mobile on 11 April shows that 10 other numbers were dialled that day. Of these numbers 8 are included either in the speed dial section of the memory or in the alphabetical directory of the memory. The numbers dialled included a man identified as KP (dialled twice), a man identified as Wilson (four times), a woman identified as Serena (three times), a person identified as Pendlebury (twice), Mum (once), Rachel home and mobile (five times), and Home (once). 13. It is apparent from the message section of the mobile (JET1 pages 40-45 and particularly page 42) that Rachel is either the Applicant's girl-friend or someone who is emotionally very attached to him. 14. The evidence

also shows that apart from 11 April, KP was contacted regularly on the mobile throughout this period, three times on 10 April, twice on 12 th , eight times on 13 th and nine times on 14 th . It is apparent, too, that on 11 April in the important period between the successful call to Mrs Allan at 19.13 and the 22.30 missed call, the 07797 811599 mobile called Wilson twice, Serena once, and Pendlebury once. 15. A glance at the days before and after 11 April show that the same mobile number called Wilson thirteen times on 10 April and once again on 11 th (after the last contact with Mrs Allan), twice on th , and once on 13 th . Furthermore the same mobile was used to call Serena regularly throughout the period, twice on 9 th , three times on 10 th , another time on 11 th (before the first call to Mrs Allan), and twice more after the final call. Lastly, by reference to those three persons called between the crucial Allan calls, the mobile was used to call Pendlebury twice on 8 April, twice on 10 th , once on 11 th (after the last contact with Mrs Allan), and twice on 14 th . 16. In our judgment therefore there was evidence that the owner of the mobile, conceded to be the Applicant, who had clearly filled his speed dial and alphabetical memory bank with the telephone numbers of family and friends, had used his telephone to contact people on both lists throughout the period and that, importantly, the telephone had been used to dial three people on those lists during the evening of 11 April between the critical calls at 19.13 and 22.30. These same people were also regularly contacted on days before and after that day. 17. The prima facie conclusion derived from ownership that the mobile was being used at the time by the owner is also confirmed by the fact that the numbers dialled on the relevant day included the girl-friend of the owner and also those whose names and numbers the habitual user of the mobile had entered into the mobile memory, as a person called "Mum" and a place referred to as "Home". 18. Moreover since there was no evidence before the Court that the mobile had at any time been stolen, lost or lent, there was nothing to contradict the evidence referred to above or to suggest that the Applicant had not been in possession of the mobile on 11 April. In the absence of such evidence, the Court was entitled, in our judgment, to feel sure that their prima facie conclusions were justified. 19. Mrs Pearmain's submission is devoid of merit and does not reflect the evidence before the Royal Court. The leave to appeal against this conviction is refused. No Authorities Page Last Updated: 10 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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