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COURT OF APPEAL
25TH SEPTEMBER, 1987

Before: Sir Godfray Le Quesne, Q.C., (President)
Sir Patrick Neill, Q.C., and
R.D. Harman, Esq., Q.C.

Referral by the Secretary of State under Article 41 (a)
of the Court of Appeal (Jersey) Law, 1961, of the
case of John Patrick McLaughlin

The Attorney General
Advocate P.R. Cushen for Mr. McLaughlin

TRANSCRIPT OF THE PROCEEDINGS

President: Mr. Attorney, are you going to begin?

ATTORNEY GENERAL: As the Court wishes Sir. The Court has been convened to hear a reference made by the Secretary of State pursuant to Article 41 of the Court of Appeal (Jersey) Law. I take it Sir, that the Court has copies of the Court of Appeal Law in front of it?

PRESIDENT: Yes.

ATTORNEY GENERAL: Article 41 (a) provides that: "nothing in this part of the law shall affect the prerogative of mercy, but as respects the conviction of a person on indictment by the Royal Court or the sentence, other than sentence of death, passed on a person so convicted, being a conviction or sentence against which an Appeal lies under this part of this Law to the Court of Appeal, the Secretary of State may, if he thinks fit, at

any time, either (a) refer the whole case to the Court of Appeal and the case shall be then heard and determined by the Court, as in the case of an Appeal by a person convicted ..." Sir, the powers of the Court Sir, under a reference by the Home Secretary are the same as under any Appeal and I refer the Court to chapter 7 paragraph 79 of Archbold, at the 42nd edition. Perhaps the Greffier has copies of Archbold?

PRESIDENT: Well let's go on, Mr. Attorney, thankyou. You read it to us.

ATTORNEY GENERAL: It's a very short passage I wish to refer you to. "The fact that a case comes before the Court of Appeal on a reference by the Home Secretary has no significance so far as the powers of the Court of Appeal are concerned". And so the powers of the Court of Appeal Sir, are the same as in any other Appeal and I accordingly refer you to Article 25 of the Court of Appeal (Jersey) Law 1961. And paragraph 1 provides: "on any Appeal against conviction the Court of Appeal shall allow the Appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported, having regard to the evidence, or that the judgement of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the Appeal". Sir, and paragraph 2: Subject to the special provisions of this part of this Law, the Court of Appeal shall, if it allows an Appeal against conviction, quash the conviction and direct a judgement and verdict of acquittal to be entered". I draw the Court's particular attention to the words in paragraph 1, "shall allow the Appeal if it thinks that the verdict should be set aside on the ground that it cannot be supported having regard to the evidence". The appellant, Sir, was convicted upon the evidence of two witnesses for the prosecution, Detective Chief Inspector Quinn and Detective Sergeant Follain. And if I may refer you to page 11 of the summing up of the learned Deputy Bailiff at the trial, which is to be found Sir, in my learned friend's bundle of papers, under the bundle which begins "Application of John Patrick McLoughlin to the Secretary of State for reference of his case to the Jersey Court of Appeal".

Page 11 of the bundle I think.

PRESIDENT: It begins at page 10.

ATTORNEY GENERAL: The summing up Sir, begins at page 10. Now, if I could take the Court to the middle of page 11 where the learned Deputy Bailiff summarises the evidence for the Crown, about a third of the way down the page he says, "now the Crown relies as I am sure you realise on three main submissions. That is to say the admissions by the accused himself. First when he was arrested in the pub in Great Union Road where you remember the Crown says that he complained about being grassed and swore about Lagan having shaved off his beard. You will remember incidentally that in evidence when he testified before you, the accused agreed that Lagan had in fact a beard at some stage. Secondly when he was arrested and interviewed for the first time in a question and answer session on Saturday the 27th October, and thirdly when there was a second question and answer interview later the same day, and fourthly, this is of course is related to the second and third matters, when both of those interviews, that is to say the question and answers were read out to the accused in the presence of Detective Chief Inspector Quinn, and although the accused refused to sign them, Detective Chief Inspector Quinn did so. In addition, the Crown puts before you a number of other matters which it describes as straws perhaps, but which tended to support its submission that the accused was one of the robbers. These matters are first the evidence of Mr. Robson sighting the accused in Vauxhall Street, it is said shortly after the incident itself and secondly the description of one of the robbers given by Mr. O'Neill, that is to say that he was wearing a black bomber jacket which was subsequently found or one similar to it in the lodgings of the accused later that day. And thirdly the Crown puts before you the accused's impecuniosity before the robbery contrasted with his ability to pay off some of his debts afterwards. The Crown has drawn your attention to the accused's bad character" - and so on. Sir, the case for the Crown at the trial of the appellant rested fairly and squarely upon the evidence of Detective Chief Inspector Quinn and Detective Sergeant Follain as to the admissions which he was said to have

made to them on arrest and during the time while he was in custody. As is clear from my learned friend's papers, Sir, that evidence has now been the subject of further investigation, which resulted in the arrest and prosecution of Detective Chief Inspector Quinn and Detective Sergeant Follain on a charge of conspiracy to pervert the course of justice by fabricating evidence against the appellant. The officers were subsequently acquitted of that charge. Nevertheless Sir, in my submission it follows from the mere fact of the prosecution itself that the evidence which convicted McLoughlin is open to doubt. I could not submit that it would be proper for the verdict of the Jury to stand and that it would be safe for the Court to rely in these changed circumstances upon that evidence. There must Sir, to put it at its' lowest, there must be a doubt, and the appellant, in my submission is entitled to the benefit of that doubt, and the Crown would not urge the Court to reject the application which my learned friend wishes to put seeking that the conviction be quashed in accordance with the provisions of the Court of Appeal law.

PRESIDENT: Thankyou Mr. Attorney. Well having heard that - Mr. Cushen have you anything to add?

ADVOCATE CUSHEN: May it please the Court. In short the appellant's case is that as the learned Attorney General has informed the Court, fresh evidence has arisen which had it been given at the trial of McLoughlin would have caused the Jury to have acquitted him, that is it would, at the very least, have caused them to have a reasonable doubt as to his alleged guilt. I would submit Sir, that the summing up of the Deputy Bailiff, as he then was, in the bundle which I have submitted to the Court, shows quite clearly as the learned Attorney General has outlined, that the conviction of the appellant was based very much on the three incidents which the learned Attorney General has mentioned; namely, an alleged admission, or an alleged incriminating remark rather, which the appellant allegedly made when he was arrested on the evening when the offence was committed. This evidence was provided by Detective Chief Inspector Quinn and Detective Inspector Blenkinsop, although I say Detective Inspector Blenkinsop infact, Detective Inspector Blenkinsop was called at the committal proceedings of the appellant and at that stage made no such reference to alleged incriminating remarks of the appellant. He was not called

for some unknown reason at the main trial of the appellant, and it is only subsequently to those proceedings that Detective Inspector Blenkinsop has stated that he heard those incriminating remarks.

PRESIDENT: One moment. Mr. Cushen I don't think we need trouble you to take the matter any further. The Attorney General has told us that in view of what has transpired since the trial he can't submit that the conviction is safe and in those circumstances we think it clear that we should quash the conviction.

ADVOCATE CUSHEN: I'm grateful Sir. I would therefore ask Sir, in addition to quashing the conviction, in accordance with Article 25 (2) of the Court of Appeal (Jersey) Law, 1961, that the Court of Appeal directs a verdict of acquittal.

PRESIDENT: Yes, that must follow.

ADVOCATE CUSHEN: I have a further application Sir.

PRESIDENT: Yes.

ADVOCATE CUSHEN: I would Sir apply for the costs of this Appeal and also the costs of the preliminary and incidental proceedings to this Appeal?

PRESIDENT: The preliminary proceedings being the presentation of the petition to the Home Secretary?

ADVOCATE CUSHEN: Indeed Sir, and my earlier application for discovery of documents Sir.

PRESIDENT: Mr. Attorney?

ATTORNEY GENERAL: I don't think the Crown can resist that.

PRESIDENT: Very well.

ADVOCATE CUSHEN: I'm grateful Sir.