14 pages

Judgment reserved: 23rd September, 1997.
Reserved Judgment delivered: 26th September, 1997. 180

Before: Sir Philip Bailhache, Q.C., Bailiff, (President);
The Rt. Hon. The Lord Carlisle, Q.C.; and
The Hon. M.J. Beloff, Q.C.

Christopher Wayne Snooks

-v-

The Attorney General

(1) Appeal against conviction by the Inferior Number of the Royal Court *en police correctionnelle*, on 21st May, 1997; and (2) application for leave to appeal against a TOTAL SENTENCE OF 5½ YEARS IMPRISONMENT, passed on 16th June, 1997, by the Superior Number, to which the appellant was remanded on 21st May, 1997, following a not guilty plea, entered on 7th March, 1997, to:

1 count of — being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:

Count 6: cannabis resin, on which count a sentence of 5½ YEARS' IMPRISONMENT was passed; and

1 count of — possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 7: cannabis resin, on which count a sentence of 5½ YEARS' IMPRISONMENT, CONCURRENT, was passed;

Leave to appeal against conviction was granted, and against sentence was refused by the Bailiff on 11th July, 1997. On 14th July, 1997, the Appellant exercised his entitlement under Article 39 of the Court of Appeal (Jersey) Law, 1961, to renew his application for leave to appeal against sentence to the plenary court.

[*On 7th March, 1997, co-accused KENNETH EVANS pleaded guilty to 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, (Count 1: cannabis resin), and was remanded in custody to receive sentence. On 16th June, 1997, a sentence of 4 years' imprisonment was imposed. No appeal has been entered.*

On 7th March, 1997, co-accused ELAINE MARGARET EVANS pleaded guilty to 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, (Count 2: cannabis resin); and 1 count of supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978, (Count 3: cannabis resin) and was remanded in custody to receive sentence. On 16th June, 1997, a sentence of 2 years' imprisonment on each count, concurrent, was imposed. No appeal has been entered.

On 7th March, 1997, co-accused KENNETH THOMAS HAMMOND was charged with 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972: Count 4: cannabis resin; and 1 count of supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978: Count 5: cannabis

resin. The prosecution against him was adjourned sine die on account of his serious illness and following his death was formally abandoned on 2nd May, 1997.]

Advocate S.E. Fitz for the appellant.
C.E. Whelan, Esq., and P. Matthews, Esq., Crown Advocates.

JUDGMENT

THE PRESIDENT: This is an appeal by Christopher Wayne Snooks against his conviction and an application for leave to appeal against his sentence imposed by the Inferior Number sitting *en police correctionelle* on one count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of cannabis resin contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, and on another of possession with intent to supply that cannabis resin contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

After hearing submissions we allowed the appeal and quashed the conviction on the first count, dismissed the appeal against conviction on the second count, allowed the appeal against sentence and stated that we would give our reasons at a later date. This we now proceed to do.

The appellant was convicted after a three day trial at the conclusion of which the Deputy Bailiff had taken the unusual course of summing up to the jurats in open court rather than in chambers. This departure from the usual practice has given rise to one of the grounds of appeal. That ground of appeal does not complain of the practice followed but asserts that the Deputy Bailiff *"should have abided by the same rules when summing up in open court to the jurats as he would to a jury at a Criminal Assize"*. Because the practice followed by the Deputy Bailiff breaks new procedural ground in trials before the Inferior Number sitting *en police correctionelle* the Court invited the Attorney General to give consideration to this question and to address the Court in relation to it. The Attorney General deputed the task to his senior Crown Advocate and we are grateful to Mr. Whelan and indeed to Miss Fitz for their submissions. It is convenient to deal with these matters of principle before going on to consider the substantive complaints about the content of the Deputy Bailiff's summing up. They reduce to two questions.

(1) Is it necessary or desirable that the presiding judge's summing up to the jurats at the conclusion of the evidence in a trial before the Inferior Number sitting *en police correctionelle* or *sans enquête* should be in open court rather than in chambers?

(2) Wherever the summing up takes place should the presiding judge direct the jurats fully on the law and the facts as if they were a jury?

(1) Although the origins of the office of jurat are lost in the mists of antiquity it is clear that by the middle of the 13th century the

jurats were administering justice with the Bailiff in a court which became known as the Royal Court. The office was always one of singular constitutional importance. Until very recently the Royal Court could not be properly constituted by the Bailiff sitting alone. Traditionally the Court was constituted as the Inferior Number when the Bailiff sat with two jurats and as the Superior Number when the Bailiff sat with at least seven jurats. The Royal Court may be described as a collegiate court. At customary law its members, both Bailiff and jurats, were equal judges both of law and fact. This position was changed by the Royal Court (Jersey) Law, 1948, Article 13 which provides:

"POWERS OF THE BAILIFF AND JURATS

(1) In all causes and matters, civil, criminal and mixed, the Bailiff shall be the sole judge of law and shall award the costs, if any.

(2) In all causes and matters, civil, criminal and mixed, other than criminal causes tried before the Criminal Assizes, in which causes the jury shall, as heretofore, find the verdict, the jurats shall be the sole judges of fact and shall assess the damages, if any.

(3) In all criminal and mixed causes, the jurats shall determine the sentence, fine or other sanction to be pronounced or imposed.

(4) In all causes and matters, civil, criminal or mixed, the Bailiff shall have a casting vote whenever the jurats -

(a) being two in number, are divided in opinion as to the facts or as to the damages to be awarded or as to the sentence, fine or other sanction to be pronounced or imposed; or

(b) being more than two in number, are so divided in opinion with respect to any one or more of the matters specified in sub-paragraph (a) of this paragraph that the giving of a casting bote is necessary for the finding of a majority opinion".

It follows that, at least from 1948 onwards, the Bailiff became obligated in criminal trials where the jurats rather than a jury were the judges of fact to give them guidance or directions on matters of law. Those directions have normally been given in chambers after the closing speeches of prosecuting and defence counsel have been delivered. A notable exception was the case of AG -v- Paisnel (1972) JJ 2201. Paisnel had been charged with serious sexual and other offences against children. He elected not to be tried by a jury but to be tried by the *Nombre Inférieur sans enquête*. The Bailiff summed up to the jurats in open court. On appeal to this court, Le Quesne JA, giving judgment, stated in relation to that innovation that *"It appears to us that the course which was adopted was perfectly consistent with the provisions of the Law and entirely appropriate in a serious case such as this".* It is clear, however, that it has been the almost invariable practice of the Royal Court for a very long time that directions by the Bailiff are given in chambers. Both counsel submitted and we agree that neither the

1948 Law nor the Court of Appeal (Jersey) Law, 1961, require that such directions be given in open court.

The desirability of such directions being given in open court is, however, a different question. It arose tangentially before this Court in MacKenzie -v- AG (1995) JLR 9 CofA where the procedure adopted at a Newton hearing was under consideration. During the course of his judgment Le Quesne JA stated:

> *"We have held that the Law does not require the Bailiff to give his directions of Law in a 'Newton' hearing in open Court. Nevertheless, it is in our judgment desirable, in order that justice may better be seen to have been done, for the view of the Law upon which the Jurats reach their decision to be stated in the presence of the parties. We therefore suggest that in 'Newton' hearings it would be better for the Bailiff to give his directions of Law in open Court before the Court retires. This would be entirely consistent with the Law of 1948, and would have the additional advantage of enabling counsel to ask the Bailiff, if they thought it necessary, either to modify his directions or to add to them. It might then be convenient for any reference to the evidence which the Bailiff in his discretion decided to make to be given at the same time.*
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> *A similar course may also be desirable in trials before the Inferior Number; but we say that only tentatively, because such a case is not before us and we have consequently not had the advantage of detailed discussion of the procedure in such trials".*

We have now had the benefit of such detailed discussion and have concluded that the Deputy Bailiff was right to break with tradition. We think it is desirable that the directions of the presiding judge be given in open court. As Le Quesne JA stated in MacKenzie, this would be consistent with the 1948 Law and would have the advantage of enabling counsel to ask the presiding judge, if thought fit, to modify his directions or to add to them. Not unimportantly, the defendant would also be able to hear them at first hand. We accept that under the current practice the substance of such directions is available to counsel, either upon request at the trial or by obtaining the judge's report following a conviction. Neither of these means of obtaining information as to how the presiding judge has directed or proposes to direct the jurats is however as satisfactory as hearing those directions as they are given. Additionally, of course, if given in open court, they will be recorded and available both to a defendant to assist consideration of the possibility of an appeal and, if necessary, to an appeal court. This consideration appears also to be consistent with the provision in Article 40 of the Court of Appeal (Jersey) Law, 1961, which requires that a shorthand note *"shall be taken of the proceedings at the trial or indictment of any person ...."*. Finally, it is open to question whether a summing up in private complies with the requirement in Article 6 of European Convention on Human Rights which provides:

> *"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...".*

It is true that the Convention is not part of the domestic law of Jersey but it has been extended to the Bailiwick. In England it has been held that the Convention may be used as an aid to the development of the common law and in particular in relation to the exercise of judicial discretion in criminal proceedings. See R -v- Khan (Sultan) (1996) 3 WLR 162. For all these reasons we answer the first question which we have posed by stating that we think it is desirable that the summing up of the presiding judge at a trial before the Inferior Number sitting *en police correctionelle* or *sans enquête* should be given in open court. We hope that the Royal Court might give consideration to this suggestion. Before parting from this question we should add that we heard some argument as to whether, having delivered a summing up in open court, the presiding judge should any longer retire with the jurats [since initially they alone are the judges of fact]. We make no observations on this point other than to suggest that this is an issue which merits careful consideration by the Royal Court.

(2) We turn now to the second question which is whether that summing up should be in all respects identical in content to a summing up delivered to a jury at an assize trial. Both counsel agreed that the presiding judge was under an obligation to direct the jurats fully on relevant matters of law, such as the ingredients of any offence charged, the mental element of any such offence and so on. Mr. Whelan's only reservation was that, because the jurats were a standing panel of judges, there was room to argue that the omission of certain elementary directions such as on the burden and standard of proof ought not to be fatal. Jurats could be taken by reason of their experience to have such basic knowledge. Thereafter, however, counsel parted company. Mr. Whelan submitted that to sum up on the facts as if the jurats were a jury would be unnecessary and inappropriate. It would be unnecessary because jurats were not only standing members of the court but also mature men and women chosen for their competence, integrity and sound judgment. They were well capable of reaching conclusions on factual issues without having the argument rehearsed for them. It would be inappropriate, Mr. Whelan submitted, because the Bailiff was a reserve judge of fact who gave a casting vote in the event of equality of opinion. It would be quite wrong, he argued, for the Bailiff to expound routinely to co-equal judges on issues of fact.

Miss Fitz submitted that no distinction should be observed between a summing up to the jurats and a summing up to a jury. She referred to a judgment of the Guernsey Court of Appeal in AG -v- Heywood (31st January, 1972) where this very issue arose for decision. Sir Robert Le Masurier, D.S.C., delivering the judgment of the Court, stated:

> *"It is usual for a judge summing up to a jury not only to direct them upon the law, but also to remind them of the evidence. The reason for this is that the jury must have the evidence fresh in their minds when they consider their verdict, and it is not easy for those unaccustomed to proceedings in court to carry in their minds throughout the trial all the evidence that they hear. It may no doubt be said that in this respect the more experienced jurat will stand in need of less help than the less experienced; but the verdict is the responsibility of all the jurats, and it is therefore to the less experienced that the summing up must be accommodated. In view of the paramount importance of*

ensuring that the verdict is based upon full and fair consideration of the evidence, it is no less desirable for the Bailiff to remind the jurats of the evidence than it is for a judge to remind the jury.

We may add that if the argument of Her Majesty's Comptroller is accepted it is difficult to determine by what standards the Bailiff's summing up is to be considered when complaint of its adequacy is made, and to know by what train of thought and according to what reasoning it is to be assumed that the jurats reached their verdict.

There are two final considerations relevant to this part of the case. First, cases vary in their degree of difficulty and complication. There are some in which it would plainly be desirable even for the most experienced jurats to receive full directions from the Bailiff. This confirms the view that full directions should be given in every case, for the Bailiff's duty in summing up is not something which should vary from one case to the next. Secondly, it must always be remembered that justice should not only be done, but also should manifestly be seen to be done. A full summing up by the Bailiff is the only means by which it can be publicly demonstrated that the lay members of the Court - the jurats - are reaching their verdict with due regard to the relevant rules of law.

We therefore conclude that, if the law requires the Bailiff to sum up to the jurats, as it is accepted that it does, then the relationship between them is strictly analogous to that of judge and jury. The duty of the Bailiff in summing up to the jurats is exactly the same as that of a judge summing up to a jury".

It must be said, however, that the law and practice in Guernsey differ from those of this jurisdiction in at least one material respect. Even before the enactment of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950 it was apparently the practice of the Bailiff to sum up in open court to the jurats who alone returned the verdict of the Court. That practice was given statutory recognition by Section 6(4) of that Law which provided:

"The jurats of the Royal Court may, and at the request of any one of them shall, retire from the Court for consultation immediately after the summing up. If during such consultation they require direction, advice or information, they shall return to the Court for this purpose and their questions shall be put to the Bailiff, and the answers thereto shall be given, in open Court".

It seems clear that in Guernsey the jurats have been summed up for many years in the same way as a jury. This may not be thought surprising in that jury trial does not exist in that jurisdiction; all trials on indictment take place before the jurats.

In Jersey, by contrast, it has never been the practice for the presiding judge to sum up fully to the jurats exactly in the same way as

he would sum up to a jury. Is it necessary for the interests of justice that he should do so?

In our judgment the answer to that question is no. We accept the argument of Mr. Whelan that there is a qualitative difference between a bench of jurats and a jury drawn at random from the mass of the Island's electors aged between 25 and 65. We see no reason why that difference cannot sensibly be acknowledged in laying down the rules for the content of the presiding judge's summing up. Clearly that summing up must contain full and adequate directions on all relevant matters of law. We consider that ordinarily a direction on the burden and standard of proof should be included although no specific formula is required. We adopt, and respectfully adapt for our purposes, the words of Lord Hailsham LC in R -v- Lawrence [1982] AC 510 at 519:

> *"It has been said before but obviously requires to be said again. The purpose of direction to a jury is not best achieved by a disquisition on jurisprudence or philosophy or a universally applicable circular tour round the area of law affected by the case. The search for universally applicable definitions is often productive of more obscurity than light. A direction is seldom improved and may be considerably damaged by copious recitations from the total content of a judge's notebook. A direction to a jury should be custom-built to make the jury understand their task in relation to a particular case".*

In summing up to the jurats, the presiding judge is entitled to construct his directions against the background of the knowledge and experience of the jurats and to take that into account. In many cases, in most cases even, directions on how to approach the evidence and how to evaluate it will be unnecessary. If, however, the presiding judge does refer to the facts he must obviously do so in an even-handed way. If he refers to the evidence which supports the prosecution case he must clearly direct attention equally to the evidence for the defence. As with any summing up the keynote is fairness.

In summary, we answer the second question by stating that while the presiding judge should direct the jurats fully on the law it is not necessary that he should so direct them on the facts as if they were a jury.

Having disposed of those preliminary points of principle we turn to the arguments advanced in support of the appeal against conviction. A number of grounds were initially relied upon but during oral argument were found to be of no real substance.

The facts were relatively straightforward. The appellant was charged jointly with Kenneth Evans, Elaine Margaret Evans, his wife, and Kenneth Thomas Hammond. Hammond died before the trial and the prosecution against him was accordingly abandoned. Both Evans and Mrs. Evans pleaded guilty to an offence under Article 77(b) of the Customs and Excise Law of being knowingly concerned in the importation of 11.8 kilograms of cannabis resin. Mrs. Evans also pleaded guilty to supplying cannabis resin to the appellant contrary to Article 5(b) of the Misuse of Drugs Law. On 11th September, 1996, Mr. and Mrs. Evans collected a Ford Fiesta from the appellant's home. In the early hours

of 12th September, Mrs. Evans delivered the car to Hammond. Mrs. Evans then drove to Weymouth in a Renault 5 with her mother and daughter followed by Hammond in the Ford Fiesta. Both cars and their passengers travelled to Jersey on the ferry that morning. Shortly after their arrival in Jersey Mrs. Evans took possession of the Ford Fiesta and drove it to a car-park on Route du Fort. There she removed some packages of cannabis resin from behind the interior panels of the car and placed the drugs in one of two holdall bags. She later drove to another car-park at La Mare, St. Clement. In the meantime, the appellant, his brother and another man had arrived by air and taken delivery of a hire-car. This hire-car was driven to the car-park at La Mare where police officers observed the appellant meet up with Mrs. Evans. The appellant was seen to be handling the two bags containing the drugs which were transferred to the hire-car. Shortly after he went into a public telephone kiosk where he was arrested. Other officers took possession of the bags containing the drugs. The appellant's defence was that he did not know that the bags contained cannabis and that he thought they contained cash. He was supported in this story by the testimony of Mr. and Mrs. Evans. Evidence was before the Court of several trips to Jersey of short duration by the appellant between May and September, 1996, at a time when he was for the most part unemployed.

The principal grounds of appeal related to alleged deficiencies in the summing up of the learned Deputy Bailiff.

Firstly, it was submitted that the Deputy Bailiff had wrongly failed to direct the jurats on the appellant's previous good character and the effect of such good character on the credibility of his evidence. In support of this submission, Miss Fitz referred us to the case of R -v- Vye, Wise, Stephenson [1993] 1 WLR 471 at p.474, where Lord Taylor of Gosforth CJ stated:

> *"In February, 1989, in R. -v- Berrada (Note) (1989) 91 Cr.App.R. 131, this court considered among other grounds, an alleged misdirection about good character. The defendant had given evidence. Waterhouse J., giving the judgment of the court, said, at p.134:*
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> > *"In the judgment of this court, the appellant was entitled to have put to the jury from the judge herself a correct direction about the relevance of his previous good character to his credibility. That is a conventional direction and it is regrettable that it did not appear in the summing up in this case. It would have been proper also (but was not obligatory) for the judge to refer to the fact that the previous good character of the appellant might be thought by them to be one relevant factor when they were considering whether he was the kind of man who was likely to have behaved in the way that the prosecution alleged... We have no doubt, however, that the modern practice is that, if good character is raised by a defendant, it should be dealt with in the summing up. Moreover, when it is dealt with, the direction should be fair and balanced, stressing its relevance primarily to a defendant's credibility".*

That decision therefore confirmed that, whatever the position may have been previously, it is now an established principle that, where a defendant of good character has given evidence, it is no longer sufficient for the judge to comment in general terms. He is required to direct the jury about the relevance of good character to the credibility of the defendant. Conventionally this has come to be described as the "first limb" of a character direction. The passage quoted also stated that the judge was entitled, but not obliged, to refer to the possible relevance of good character to the question whether the defendant was likely to have behaved as alleged by the Crown. That, in effect the Stannard direction, is the "second limb".

Leaving aside cases involving more than one defendant where one is of good character and one is not, virtually all the numerous decisions since R. -v- Berrada (Note), 91 Cr.App.R.131 have reiterated that the first limb direction is necessary wherever the defendant has given evidence. This has been held to be so even when, on his own admission, he has told lies in interview with the police: R. -v- Kabariti (1990) 92 Cr.App.R.362".

It is true that no such character direction was given by the Deputy Bailiff and Miss Fitz argued that this omission was fatal to the summing up.

In reply, Mr. Matthews submitted that the decision in Vye, Wise and Stephenson was not binding on this court and that it had in any event been subject to some criticism.

In R. -v- Wood [1996] 1 Cr.App.R.207 at p.218, Staughton LJ stated:

"Ever since the law started to lay down what a jury must be told as to the effect of good character nearly 30 years ago in Bellis [1966] 1 WLR 234, there has been trouble. Could the jury perhaps be allowed to work it out for themselves? We are, however, bound by the case of Vye, Wise and Stephenson (1993) 97 Cr.App.R. 134, [1993] 1 WLR 471 and the recent decision of the House of Lords in R -v- Aziz [1995] 2 Cr.App.R. 478, where it was upheld. In the ordinary way a direction as to propensity must be given as well as credibility when the accused is of good character. But here he was not wholly entitled to that accolade. On his own admission, he had possessed explosives in circumstances given rise to a reasonable suspicion that it was not a lawful object. In those circumstances the judge might perhaps have said nothing about propensity, as he did, or he might have said that Wood did, or he might have said that Wood had shown some propensity to commit that offence but not a propensity to commit the other offence for which he was in the jury's charge. We decline to express a view as to which was the right course, if indeed either was more right than the other".

In our judgment, there is no force in this criticism of the Deputy Bailiff's summing up. If a clear direction had been given it would have

been necessary to qualify it in ways which would have detracted considerably from its beneficial effect so far as the appellant was concerned. It is true that he had no previous convictions but his character was not without blemish. On his account of his activities he had been engaged for some months in smuggling currency between England and Jersey. On his own admission he had lied to the police in giving a false explanation as to what he thought the bags contained. All these matters were considerations which the jurats were perfectly capable of weighing in the balance without receiving specific directions from the presiding judge.

Secondly it was submitted that the Deputy Bailiff had made a factual error in referring to the appellant's evidence that a woman had rushed in and out of the telephone kiosk *"within seconds of his being there"*. There was also a reference to defence counsel's having inferred that the purpose of the appellant's going to the kiosk was to telephone Evans to ask him what was in the bags. In fact, counsel had suggested that he was telephoning Evans because he had not expected to see Mrs. Evans and he wanted to find out what was happening. In our judgment these minor factual errors are not significant and could not possibly have affected the verdict of the jurats.

Thirdly it was submitted that the defence had not been fairly put when the summing up was viewed as a whole. We have examined carefully the different points made by Miss Fitz in relation to this submission but we find no force in it. Some of the points which were alleged to be unfavourable to the appellant on analysis proved to be neutral or even favourable to him (in particular on the standard of proof). While it is true that the jurats were not reminded of every piece of evidence which was favourable to the defence, the Deputy Bailiff was under no duty to do so. What we do find is that the Deputy Bailiff was at pains to remind the jurats throughout the summing up that the appellant's defence was that he did not know that the bags contained cannabis resin and that it was his state of mind at the relevant time which was important. The Deputy Bailiff also reminded the jurats on more than one occasion that the appellant's version of events was supported by other witnesses. We accordingly reject this criticism of the summing up.

There was, however, one aspect of the summing up which did cause us concern. We have already stated that the presiding judge is under a duty to direct the jurats fully on the law and in particular on the ingredients of the offences charged against the accused person. The appellant was charged with two alleged offences, viz being concerned in the importation of the cannabis resin and being in possession of the drugs with intent to supply. At the beginning of his summing up the learned Deputy Bailiff referred to the two offences and read out the particulars of the count alleging involvement in the importation. Thereafter he did not refer to the importation offence again. Indeed, the summing up appeared to conflate the two counts to the extent that towards the end of it the Deputy Bailiff stated *"You will no doubt concentrate and you will forgive me for saying so, on the only question that you have to ask yourselves and that is whether Snooks is guilty of the offence with which he is charged"*. It is of course true that the two counts were closely inter-related. Nevertheless it was incumbent on the Deputy Bailiff to direct the jurats as to the ingredients of each separate count. This he failed to do. It was for that reason that we allowed the appeal on count 7 and quashed the conviction for being

concerned in the importation of the cannabis resin. In other respects we found no substantial fault with the summing up nor did we find any substance in the remaining grounds of appeal. There was ample evidence upon which the jurats could make a finding of guilt. The appeal against conviction for possession of the cannabis resin with intent to supply was accordingly dismissed.

Miss Fitz then renewed her application for leave to appeal against sentence, the application having been refused by a single judge. Her principal argument was that the appellant was labouring under a grievance that there had been undue disparity between the sentence meted out to him by comparison with his co-accused. The alleged grievance took two forms. First, it was said that the Court had taken a starting point of 4 years for Mrs. Evans which resulted in a sentence after mitigation factors had been taken into consideration of 2 years' imprisonment. In his case a starting point of 6 years had been taken resulting in a sentence of 5½ years after mitigation on grounds of previous good character had been allowed for. It seems clear from the submissions that the Court took a starting point of 4 years for Mrs. Evans because it accepted her explanation that she had filled only one of the bags with cannabis resin and that she had known nothing about the second bag. The consequence of this acceptance was that Mrs. Evans fell to be sentenced for the importation and supply of half the quantity of cannabis resin with which the appellant was concerned. The application of the tariff set out in the guideline case of Campbell, Molloy, MacKenzie -v- AG (1995) JLR 136 CofA, led to the starting point of 4 years in her case. This might have been a generous approach to the culpability of Mrs. Evans but it was nonetheless based upon the Court's assessment of her involvement in the drug trafficking which differed from its assessment of the appellant's culpability. We could find no legitimate ground for any grievance on the part of the appellant in this respect. The second form of the alleged grievance related to the appellant's sentence in comparison with Evans. The Court found that Evans' involvement was greater than that of the appellant and took a starting point of 7 years in his case. After making allowances for his guilty plea and other mitigation Evans was sentenced to 4 years' imprisonment. It is possible that this allowance was also generous. The net result was that Mrs. Evans received 2 years, Evans received 4 years and the appellant received 5½ years. The principal reason for the disparity between the sentences received by Evans and the appellant was of course that the appellant pleaded not guilty and was not entitled to a discount for a guilty plea. Nevertheless we were left with an uneasy feeling that the appellant might have felt that he had not received the same allowance for his previous good character as his co-accused and that he had been penalised for contesting the case. In order to avoid any possible sense of grievance we granted the application for leave to appeal, quashed the sentence of 5½ years, and substituted therefor a sentence of 5 years' imprisonment.

JUDGMENT
(on application for costs under Article 3(2) of the Costs in Criminal Cases (Jersey) Law, 1961).

THE PRESIDENT: The Court has been asked to exercise its discretion in the matter of costs, Miss Fitz having made an application under Article 3(2) of the Costs in Criminal Cases (Jersey) Law, 1961.

The Court will grant the application in relation to the argument which took place on the preliminary issues relating to the location and content of the summing up of the presiding judge in a trial before the *Nombre Inférieur* sitting *en police correctionelle*.

So far as the second limb of the application is concerned, in the exercise of its discretion the Court is going to refuse the application. The Court considers that the point which led to the quashing of the conviction for importation was a technical point which was essentially raised by the Court rather than by counsel and on that basis it would not be right to exercise the discretion in favour of the appellant.

Authorities
(Conviction Appeal)

Weston -v- AG (1980) JJ 43 CofA.

Carr-Briant (1942-1944) CAR 76.

Edwards (1983) CA 5.

Goncalves -v- AG (14th December, 1992) Jersey Unreported.

Wood [1996] 1 Cr.App.R. 207.

Coyne -v- AG (1969) JJ 1081 CofA.

AG -v- Lavis (16th May, 1997) Jersey Unreported.

Marr (1990) 90 Cr.App.R. 154.

R -v- Rautamaki (1993) Cr.LR 691.

R -v- Lucas (1981) 1 QB 720.

Burge & Pegg (1996) 1 Cr.App.R. 163.

R -v- Vye, Wise, Stephenson (1993) 1 WLR 471.

R -v- Aziz [1995] 3 All ER 149.

R -v- Tillman [1962] Cr.LR 261.

Venton -v- AG (1982) JJ 1 CofA.

Paisnel -v- AG (1972) JJ 2201 CofA.

MacKenzie -v- AG (13th January, 1995) Jersey Unreported CofA.

Heywood -v- AG (31st January, 1972) Court of Appeal of Guernsey.

Lapidus -v- AG (24th September, 1987) Jersey Unreported CofA.

AG -v- Bale & Ors. (1983) JJ 7.

Broadbent -v- AG (1967) JJ 803 CofA.

Archbold (1997 Ed'n): paras. 25-459; 7-43 to 7-69.

(Sentence Appeal)

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