COURT OF APPEAL. 5.

13th January, 1995

Before: Sir Godfray Le Quesne, Q.C., President,
Sir Louis Blom-Cooper, Q.C., and
Sir Charles Frossard, K.B.E.

Malcolm Lewis MacKenzie

-v-

Her Majesty's Attorney General

Appeal against a sentence of 8 years' imprisonment imposed by the Superior Number of the Royal Court on 18th April, 1994, following a not guilty plea on 5th November, 1993, changed to a guilty plea on 18th March, 1994, before the Inferior Number, and a 'Newton' hearing before the Superior Number on 22nd and 23rd March, 1994, on:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of goods (diamorphine) contrary to Article 77 (b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972.

Leave to appeal was granted by the Deputy Bailiff on 24th May, 1994.

Applications for leave to call further evidence.

Advocate S.E. Fitz for the Applicant.
C.E.Whelan, Esq., Crown Advocate.

JUDGMENT

THE PRESIDENT: On 11th November, 1992, a party of four travelled on a flight from Jersey to Manchester. They were the Appellant, his girlfriend, Colette Ferri, her brother, Martin Ferri, and his girlfriend, Amanda Vellam. All of them lived in the Appellant's
5 house in St. Helier. The Appellant had arranged the journey and bought the tickets, but the ticket used by Amanda Vellam bore not her name but the name of the Appellant's sister, Nadine Lewis.

When they arrived at Manchester the Appellant hired a car and drove the party to the house of a friend of his, Steve Dring, with whom he had arranged for them to stay.

5 While they were there Amanda Vellam was persuaded to carry a package back to Jersey for a reward of £1,000. The package was inserted in her vagina the following morning, 12th November.

Either the Appellant or Colette Ferri booked a flight for 10 Amanda Vellam back to Jersey and all four drove to Manchester Airport. Amanda Vellam returned to Jersey alone. She was stopped by customs officers at the Airport and the package was discovered in her vagina. It was found to contain 79.6 grams of heroin of 50% purity. These facts are agreed. We shall come in a moment to 15 other matters which are not.

Amanda Vellam was arrested after this discovery and an interview with her was conducted under caution later on 12th November. In it she said that the Appellant had asked her to 20 bring the package back to Jersey and that Martin Ferri had helped with the concealment of the package in her vagina. A few days later she made another cautioned statement in which she repeated this version of events.

25 Martin Ferri returned to Jersey on 16th November. He was arrested and charged with being knowingly concerned with evasion of the prohibition of the importation of heroin. The committal proceedings against him took place on 17th December and in those proceedings Amanda Vellam gave evidence on the lines of what she 30 had said in her statements.

I anticipate events to say that Martin Ferri's trial took place on 20th April, 1993, Amanda Vellam gave evidence against him, again to the same effect.

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He was convicted and sentenced to seven years' imprisonment. He appealed against that sentence, but his appeal was dismissed by this Court in May, 1994.

40 To go back to what happened to Amanda Vellam. On 5th March, 1993, she appeared before the Court charged with importation of the heroin. She pleaded guilty to this and was sentenced to two years' imprisonment.

45 The other two members of the party returned to Jersey at different times. Colette Ferri came first in the course of May, 1993. She appeared before the Court on 25th June, 1993, when she pleaded guilty to being knowingly concerned with the importation and was sentenced to eight months' imprisonment. The Appellant 50 did not return until the beginning of October, 1993. He was arrested on 4th October and on 2nd November came before the

Magistrates' Court charged with being knowingly concerned in evading the prohibition of the importation of the heroin.

Amanda Vellam gave evidence against him at the committal proceedings again to the same affect as on earlier occasions.

The Appellant was remanded by the Magistrate to the Royal Court for trial but before the trial came on he changed his plea to guilty but maintained, contrary to the Crown's contention, that he had not been the prime mover in the importation of the heroin.

A 'Newton' hearing was therefore held to establish on what basis of fact the appellant was to be sentenced. The issue to be decided was not defined any more precisely than this before the hearing began. It is important to notice this because in consequence the Court was naturally concerned when the evidence was given to find out just what the competing versions were and some of the Bailiff's interventions were clearly directed to this.

The 'Newton' hearing took place before the Superior Number of the Royal Court constituted by the Bailiff and eight Jurats on 22nd and 23rd March, 1994. Amanda Vellam gave evidence again. She was a young woman of 24 without convictions before this affair. She had been employed as a shop assistant at Boots. Her evidence was essentially, if not perfectly, in accord with the statements and evidence which she had given at the earlier stages. Her explanation of how she came to go on the expedition was that the other three asked her if she would like to go away with them for a few days, and they were going round the car auctions.

As to events at Liverpool she said it was the Appellant who, on 12th November, asked her to take the package to Jersey and promised her money in return for doing so. She said she was dubious about doing this but the Appellant assured her that everything would be O.K.

During her evidence Amanda Vellam became distressed. When Advocate Willing, who appeared then for the Appellant, was putting it to her that it had not been the Appellant who had persuaded her to carry the heroin, her distress increased and Mr. Willing suggested to the Court that there should be an adjournment. The Court agreed. The account of what then followed we take from the evidence which was given before this Court by Mr. Willing, application for the admission of his evidence having been made on behalf of the Appellant and not opposed by the Crown.

He said that a few minutes after the Court had adjourned, he and Mr. Whelan who appeared for the Attorney General, were informed that the Court wished to see them in Chambers. They went in and the conversation took place almost entirely between him and the Bailiff, although Mr. Whelan did make some brief contribution.

Although Mr. Willing said he could not recall all the conversation nor the precise words used, it went like this (here I use Mr. Willing's own words): *"The Bailiff began by expressing his concern as to the course that I had apparently adopted. I was asked, in effect if not expressly, what I thought I was doing. I responded by stating that I was simply pursuing a legitimate line of cross-examination based on the instructions I had received. The conversation continued and I recall indicating that Miss Vellam's credibility was very much an issue. The Bailiff questioned whether I was wise in pursuing my indicated course. He stated that this witness had been heard before and believed. I suggested that what may have been heard by the Court on a previous occasion should be disregarded. My client had not been present and had not been afforded any opportunity to cross-examination. The Bailiff indicated that he could not disregard what he had heard before. The Bailiff went on to inform me that as experienced counsel I would be aware that I was not obliged to put forward any old story on behalf of my client. The Bailiff made it plain that Mr. MacKenzie's version of events was not to be believed and that I should not put forward such a defence. His remarks struck me as being particularly odd as very little of Mr. MacKenzie's version had been set out at that point. I remember that I responded by stating that I had no reason to disbelieve Mr. MacKenzie's instructions. The conversation continued until I asked "Sir, does this mean that you've already made up your mind?" The Bailiff responded by saying "not at all". The conversation didn't continue much longer but I remember that the Bailiff asked rhetorically "Mr. Willing, do you really mean to say that the Court had the wool pulled over its eyes on the last occasion?" I responded in the affirmative and revealed that I had a letter written by Miss Vellam to Martin Ferri stating that she had lied".*

On this evidence we make two observations. The events which it describes had taken place on 23rd March. Mr. Willing was giving evidence of it almost a year later. The first occasion on which he had been asked to make a note of it was apparently in July of last year. While we do not have any doubt about Mr. Willing's attempt to give us an accurate account of what happened, he himself told us that he could not remember the exact words used. We wish to say that it is greatly to be regretted that no contemporary note of what occurred was put before the Court. When any conversation like this takes place out of Court between the Court and counsel, it is highly desirable that a note should be made at the time in case it should be necessary to refer to it later.

We have said that this should be done when a conversation takes place out of Court between the Court and counsel. We wish to emphasise that such conversations should always be avoided if it is at all possible to avoid them. In this particular case, once Amanda Vellam had retired in order to compose herself to consider her evidence, if the Court wished to put to Mr. Willing

and to Mr. Whelan the matters which in fact were put in Chambers, there was no reason why that should not have been done in open Court. Mr. Whelan conceded to us that it would have been better if it had been done in open Court and we wish to say that we endorse strongly that statement.

It is fair to add one thing more about this interview. Obviously it put counsel, and in particular Mr. Willing, in a difficult position. Mr. Willing told us that he was conducting his first criminal case before the Royal Court. It appears to us that he conducted his case with complete confidence and performed completely his duty to his client.

When the Crown evidence was completed the Appellant himself gave evidence. We summarise the most relevant features of what he said. His account of how Amanda Vellam came to be in the party was this: on an occasion which he described only as 'around the time of 11th November' his sister came to see him and told him that she was not satisfied with the running of her car. He therefore suggested that when he went to England to attend car auctions she should come with him and see if she could pick up a second-hand car in England where, he said, they would be cheaper than in Jersey. She said that she would be able to do that at any time. The Appellant then promptly booked passages for a journey to Manchester either the next day or within a few days. Having done this he rang up to tell his sister what he had done and she then said that she could not come. When Amanda Vellam heard that the Appellant and the two Ferri's were going, she asked if she could come too. We may add that the Appellant called his sister to give evidence and she admitted that in December, 1992, she had made a statement in which she had said that she had not seen the Appellant since August and nobody had ever asked her to travel to Manchester in November.

As to the events at Liverpool the Appellant's evidence was that while they were all in Steve's house, Steve had said *"does anyone want to take a package to Jersey?"* Martin Ferri and Colette Ferri had both said that they would be recognised and so could not take the package. Martin Ferri had then asked Amanda Vellam if she would take it but, the appellant said, the decision had been left to her.

When the evidence had been completed the Court retired in circumstances which we shall have to consider in more detail and eventually returned and the Bailiff announced that the Jurats found unanimously that the Crown's version of events had been established.

Mrs. Fitz, who now appears for the Appellant, has submitted to us on various grounds that the 'Newton' hearing was conducted in so irregular and indeed illegal a fashion that it should be completely set aside. She submitted first that the hearing had

been made unsatisfactory by the extent of the Bailiff's interruptions while Amanda Vellam and the Appellant were giving evidence. At a number of points, she contended, the Bailiff had descended into the arena and taken the examination or cross-examination out of the hands of counsel; one result of this had been that the Appellant had not been given a fair opportunity to tell his story in his own way.

In England, the Court of Appeal has stated in what circumstances it will be prepared to quash a conviction because of interruptions by the Judge. In R. -v- Hulusi and Purvis 58 Cr.App.R.378 Lawton LJ said at p.382:

> *"The interventions which give rise to a quashing of a conviction are really threefold: those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury and you the members of the jury must disregard anything that I the judge may have said with which you disagree. The second ground is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence; and, thirdly, cases where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way. We see no reason why this statement should not apply equally to judicial interruptions during a Newton hearing".*

The second of Lawton LJ's three grounds need not be considered, because Mrs. Fitz told us she did not contend that Mr. Willing had been inhibited from doing his duty.

Having read the transcript of the evidence carefully, we do not consider that the Bailiff's interruptions came anywhere near to establishing either of the other grounds.

Another contention put forward by Mrs. Fitz was that the Bailiff approached the hearing with a closed mind, and was not prepared to change his mind, whatever he was told by a witness. In support of this argument she relied on Mr. Willing's evidence of what the Bailiff had said in Chambers. She submitted that there the Bailiff had expressed total disbelief in the Appellant's story, and that, she submitted, must have influenced the Jurats in forming their conclusion.

In considering this argument, it is essential to bear in mind the functions which the law assigns respectively to the Bailiff and to the Jurats. These functions are set out in the Royal Court (Jersey) Law, 1948, Article 13:

> *"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.

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(2) In all causes and matters, civil, criminal and mixed, other than criminal cases 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.

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

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(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

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(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 vote is necessary for the finding of a majority opinion".

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From this enactment it is clear that the decision upon the facts of what part the Appellant had played, and the decision of the appropriate sentence, were decisions solely for the Jurats. The Bailiff would have had a casting vote if upon either question the Jurats had been equally divided, but in fact they were unanimous.

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It follows that it is not relevant to enquire what was the Bailiff's attitude to questions of fact. The evaluation of the evidence and the reaching of conclusions on it were matters for the Jurats. If they were approaching these questions fairly and properly, the fact - if it was a fact - that the Bailiff came to the hearing with a closed mind would not affect the validity of the outcome.

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While the Bailiff's attitude is not by itself a relevant factor, it would be relevant, if it could be established, that the Bailiff allowed his own attitude or opinions to influence the Jurats into an attitude hostile to the Appellant, or at least incredulous of his evidence.

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Mrs. Fitz did indeed submit that he did this, and in support of her argument relied on Mr. Willing's evidence of what the

Bailiff said in Chambers. It does appear that in that conversation the Bailiff made his own view at that stage - a view unfavourable to the Appellant - very clear, and also said he could not disregard the fact that on a previous occasion (i.e. at the trial of Martin Ferri) Amanda Vellam's evidence had been accepted by the Court.

Mr. Whelan submitted that the Jurats, with their experience of sitting regularly in the Royal Court, would have been well aware of their responsibility as sole judges of fact, and would have been unlikely to be influenced by any expression of the Bailiff trespassing upon their province. Some weight must, we think, be allowed to this consideration, and as we shall see, it appears that at the conclusion of the evidence and the speeches of counsel the Bailiff did not sum up the evidence to the Jurats, so there is no question of his having influenced them at that critical stage. It is also significant that at no point did he actually prevent Mr. Willing from pursuing a line of cross-examination which Mr. Willing had chosen, and on three occasions (we refer to pp.56, 61 and 66 of the transcript) he pointed out to Amanda Vellam, in support of Mr. Willing's cross-examination, that her evidence was inconsistent with earlier statements which she had made. On consideration of the whole transcript and the evidence of Mr. Willing, we do not find that the Bailiff exerted influence on the Jurats to reach a conclusion adverse to the Appellant.

Mrs. Fitz next submitted that it was an irregular and illegal feature of the proceedings that the Bailiff did not sum up the evidence to the Jurats or give them any directions of Law. The transcript ends with the end of the evidence. It does not contain the addresses of counsel, nor does it record what - if anything - the Bailiff said either before the retirement of the Court or on its return. However, in the course of the hearing before us Mr. Whelan produced the note which he made of what the Bailiff said when the Court returned, and Mrs. Fitz was then able to produce Mr. Willing's note of the same passage. Both notes were naturally very summary, but Mrs. Fitz and Mr. Whelan agreed that both were to the same effect, and shewed that the Bailiff said he had advised the Jurats of the burden and the necessary standard of proof and the way in which they should approach the Appellant's explanation. He then said that the Jurats had decided unanimously that the version put forward by the Crown was correct.

In the light of these notes, Mrs. Fitz withdrew her contention that the Bailiff had not given the Jurats any directions of Law, but submitted that it remained a fatal defect that he had not given directions in open Court. For consideration of this submission, we think it is useful to refer to the practice of the Royal Court in trials before the Inferior Number sitting *en police correctionelle*. In such trails it has always been the practice for the Court to retire for consideration of the verdict

without the delivery of any summing up of the evidence or directions of Law. There is no doubt that this practice must be regarded as having been sanctioned by Law before the respective functions of the Bailiff and the Jurats were changed and defined by the Royal Court (Jersey) Law, 1948. After that Law had made the Bailiff the sole judge of Law, it obviously became necessary for him to give the Jurats directions of Law. The Superior Number of the Royal Court, sitting as a Court of Appeal from the Inferior Number under Article 24 of the Court of Appeal (Jersey) Law, 1961, as it then stood, so held in 1984 in the case of A.G. -v- Bale and Fosse (2nd February, 1984) Jersey Unreported C.of.A. but held also that neither the Law of 1948 nor the Law of 1961 required that the directions of Law be given in open Court.

The Law of 1948 makes the Jurats the sole judges of fact in all causes and matters, except causes tried before the Criminal Assizes. In the face of this enactment it is impossible to hold that the Bailiff has any mandatory part in the decision of questions of fact. In a complicated case he may think it desirable to help the Jurats by reminding them of the evidence or some features of it, but that is a matter for his discretion.

In these respects a 'Newton' hearing is closely analogous to a trial before the Inferior Number *en police correctionelle.* It follows that there was nothing illegal in this case either in the giving of directions of Law in private or in the absence of any summing up of the evidence.

Finally, Mrs. Fitz submitted that the adoption in Jersey of the English practice of a 'Newton' hearing, to determine the factual basis for sentencing, carried with it the requirement of the sentencer to give reasons for preferring one version of the criminal event to another. She cites in support of the duty to give reasons the recent decision of the High Court in England (constituted by Kennedy LJ and Pill J) in R. -v- Harrow Crown Court *ex parte* Dave (1994) 1 All ER 315 to the effect that the Crown Court, composed of a Circuit Judge and two Magistrates, in dismissing an appeal against conviction by a Magistrates' Court, was generally bound to give reasons for its decision. The High Court held that the appellant was entitled to know the basis upon which the prosecution case had been accepted by the Court; a refusal to give reasons would deprive the appellant of the opportunity of challenging the decision, and as such remove a procedural safeguard.

Were the decision-makers in a 'Newton' hearing in this jurisdiction to be the Bailiff and the Jurats as a composite body, the parallel with the decision in Dave would be strong indeed. However, the Jurats are the sole determiners of the facts and of the verdict. There is thus no judicial ingredient in the decision-making process. In any event, as Mr. Whelan observed, there would be insuperable difficulties in a number of Jurats -

eight in this case - composing a reasoned decision, at least within the compass of the sentencing process of a criminal trial. Jurats are in this respect in a position no different from that of Magistrates in England who likewise are not required ordinarily to give reasons for their decisions on facts, let alone for decisions as to sentence.

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.

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.

Having made that suggestion about 'Newton' hearings, we add this. We are satisfied that there is no reason to suppose that in this case any injustice has resulted from the procedure adopted. The directions of Law were upon extremely familiar points which arise daily in criminal cases, and there is no reason to suppose that they were anything but correct. On the contrary, there could not be a clearer case for the application of the maxim *omnia praesumuntur rite esse acta* - the presumption of regularity.

As to the facts, this was a straightforward case. Two versions of the criminal event were before the Court. Steve in Liverpool was obviously a dealer in heroin. The Appellant had had him to stay for a time in his (the Appellant's) house in Jersey. In October, 1992, the month before the expedition out of which this case arises, the Appellant and Steve had travelled together both out of Jersey and into Jersey. On their entry they had been checked by customs officers, and the Appellant had given the same explanation of their journey as he gave of the journey in this case - that they had been to a car auction in Manchester. The Appellant arranged this further expedition to Steve's house. He bought a ticket for his sister, who admitted that in a statement made in December, 1992, she had said she had not seen him since August, 1992, and nobody had asked her to travel to Manchester in November. This ticket was then used by Amanda Vellam, but the name on it was not changed. The Appellant's sister, who he said

would not have carried heroin, was thus replaced by someone who was persuaded to do so, and that person travelled out under a false name, with the result that customs officers would not be looking out for someone of her name when she returned. It was, on the Appellant's story, just a coincidence that when they reached Liverpool Steve had a consignment of heroin to be taken to Jersey. It was also a coincidence that the Appellant had brought with him someone who could be persuaded, and was persuaded, to carry it. He was present when - according to his story - Steve persuaded her, and Martin Ferri and Colette Ferri were present too. Yet when Amanda Vellam returned to Jersey and was arrested and said that the Appellant had persuaded her to carry the heroin, he did not return to defend himself against this falsehood, but stayed in England for ten months, while his business in Jersey was put *en désastre* and his house in Jersey was repossessed. When ultimately he found himself putting forward his story at the 'Newton' hearing, Colette Ferri and Martin Ferri were both available to give evidence, but he did not call either to confirm his account of what had happened at Liverpool.

It is difficult to see how the Jurats could have come to any conclusion except that the Appellant's story was false; and no less difficult to see how they could then avoid the conclusion that the only other explanation of the facts before them, which was the Crown's version, was true.

In conclusion, we think it may be helpful for the conduct of future 'Newton' hearings, if we make some observations about the way in which such hearings should be conducted if they are to have satisfactory and valid results.

The origin of the practice of conducting a hearing with witnesses giving oral evidence in order to determine the true factual basis for sentencing a convicted person in an appropriate manner stems from the decision of the Court of Appeal in England in the case of R. -v- Newton (1982) 4 Cr.App.R.(S.)388. In that case Lord Lane C.J., in giving the judgment of the Court, indicated that there were three alternative methods whereby the Court could approach the problem of rival versions of the criminal events which gave rise to the conviction. One method, appropriate in cases such as those of aggravated assaults, would be to gauge the necessary intent proved by the prosecution for the precise offence. The second method was for the Court to hear no evidence but to listen to the submissions of counsel and then come to a decision. But if that approach is adopted, and there remains a substantial conflict between prosecution and defence, the Court must, in fairness, act upon the convicted person's account. The version put forward by the defence must prevail for the purpose of fixing the sentence. This course of action had become increasingly unsatisfactory, particularly in England where the prosecution has strictly no standing in the sentencing process.

In this jurisdiction, where the Attorney General or the Crown Advocate submits his conclusions as to the proper sentence to be passed, the problem is reduced by the adversarial nature of the sentencing process, but it does not resolve the difficulty where (as here) there is a real dispute as to the precise rôle which the Appellant played in the drug-smuggling enterprise. Hence Lord Lane's third suggested method of conducting a trial of the issue as to whose version of events is accurate has been sensibly appropriated by the Royal Court.

The English case law over the last dozen years has revealed a practice with some notable features (R. -v- Ahmed (1984) 6 Cr.App.R.(S.)391; R. -v- Parker (1984) 6 Cr.App.R.(S.)444; R. -v- Gandy (1989) 11 Cr.App.R.(S.)564; R. -v- Stevens (1986) 8 Cr.App.R.(S.)297; R. -v- Taylor (1993) Cr.App. Office Index A-28; R. -v- Williams (1990) 12 Cr.App.R.(S.)415). The sentencer (normally the trial judge) must function in the dual rôle of judge and jury in determining the factual issue. He must direct himself on the applicable law, invariably reminding himself of the burden and standard of proof in a criminal trial.

Translating that to the Jersey scene, the Jurats are sentencers as sole deciders of fact and sentence but must be directed on the law by the Bailiff. Thus, in addition to the question of proof, the Bailiff, in a case involving the assessment of identification evidence, would need to direct the Jurats in accordance with the guidelines in R. -v- Turnbull (1976) 63 Cr.App.R. 132: (see R. -v- Gandy (1989) 11 Cr.App.R.(S.)564). Likewise, in a case calling for corroboration of evidence, the Bailiff would need to instruct the Jurats accordingly. The Bailiff, in his discretion, may summarise the evidence for the benefit of the Jurats, but he may properly feel that that is not necessary. Any necessary direction given is reviewable by this Court; apart from exceptional cases (for instance where the Court was satisfied that no reasonable panel of Jurats could have reached the conclusion that the particular Jurats did) the Court of Appeal will not interfere with the Jurats' findings: R. -v- Ahmed (1984) 6 Cr.App.R.(S.)391 and R. -v- Parker (1984) 6 Cr.App.R.(S.)444.

In order that the 'Newton' hearing may be conducted in a satisfactory manner, it is necessary that there should be careful preparation for its conduct. As soon as a conviction is recorded and there appears to be a real issue as to the events that support the conviction, whether on a plea of guilty or after a contested trial, the Bailiff should not move to sentence without consideration being given to the possibility of a 'Newton' hearing. On an indication being given of the Court's provisional view about a determination of rival versions of the criminal event, counsel for the parties should be invited, either to agree a version or, if not, to formulate the rival versions. If the latter, such formulation should, within a stipulated time, be

reduced to writing with an indication of the witnesses whom prosecution and defence wish to call. Before the 'Newton' hearing begins the Jurats should be served with the formulated issue(s) to be tried and should ultimately return a general verdict in favour of one rather than the other version. A transcript of the evidence should be provided, together with a record of both the directions given by the Bailiff and the verdict of the Jurats on their return to Court.

In this way this Court will be left in no doubt about the propriety of the 'Newton' hearing.

For the reasons which we have given, this appeal insofar as it is directed to the validity of the 'Newton' hearing, will be dismissed. Insofar as it relates to sentence we have already adjourned it to 6th March, 1995.

Authorities

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