

## **Jonathan Beere & Daniel Payne -and- The Queen**

### Press Summary

*This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.*

#### **Background**

1. This case concerns applications made by two of five defendants known as the “Freshwater Five” who were convicted in June 2011 of conspiracy to evade the prohibition on the importation of cocaine. The prosecution case was that at around 00.30 GMT on 30 May 2010, the fishing vessel *Galwad-Y-Mor* (“the *Galwad*”) collected (“coopered”) 250kg of cocaine from the English Channel, depositing it packaged to resemble a line of lobster pots in Freshwater Bay on the Isle of Wight at around 17.45 GMT that day. The estimated wholesale value of the cocaine was £13,387,500 and the estimated street value was £53,857,788.
2. A co-defendant Green was a lobster fisherman and the owner and captain of the *Galwad*. The others on board the *Galwad* had been Payne (one of the applicants) and two other co-defendants, Dresic and Birtwistle. The prosecution case was that the other applicant, Beere, had acted as a liaison between Green and the co-conspirators, Austin and Dugic, who were organising the importation.
3. The *Galwad* was said to have positioned herself ahead of the container ship *MSC Oriane* (“the *Oriane*”), which was passing through the English Channel en route between Brazil and Holland, allowed her to pass, then proceeded to the vicinity of her wake, slowed down and performed a very slow-speed manoeuvre between about 00.32 and 00.35 GMT on 30 May 2010. The prosecution said that was when the *Galwad* coopered the drugs from the sea, into which they must have been jettisoned from the *Oriane*.
4. At trial, the movement of the *Oriane* was plotted by Mr Davidson, a prosecution expert, using AIS data obtained from a Dutch company called QPS. There was an 11-minute gap in the QPS data between about 00.26 and 00.38 GMT, so Mr Davidson’s ‘course made good’ plot for the *Oriane* was a straight line between those times.
5. The *Oriane* was under surveillance by the authorities as she passed through the English Channel, from a UK Border Agency cutter, *HMC Vigilant* (the “*Vigilant*”), and a surveillance aircraft, as part of Operation Disorient, a Serious Organised Crime Agency operation led by SOCA Silver Commander Miles Bonfield. As part of Operation Disorient, the *Galwad* was observed on her return to the Isle of Wight by two Hampshire police officers, DC Jeans and DC Dunne. For about an hour from around 16.50 GMT on 30 May 2010 she was in the right area to have dropped the drugs found in the water the next day.
6. At 17.53 GMT the two officers saw items being jettisoned from the *Galwad* into the sea, an observation logged at the time as 6 or 7 items thrown overboard at intervals. In subsequent statements and their evidence at trial, the officers embellished this to match the description of the drugs as found the next day (10 to 12 holdalls on a string together with a red buoy). It was not disputed at trial that items *had* been jettisoned from the

*Galwad* in that location, but the defence said they were rubbish bags and a bag used to line a bucket used as a lavatory.

7. There were four proposed grounds of appeal. The Court finds that they all fail; the applications for leave to appeal out of time, and to rely on new evidence, are dismissed.

**Ground 1:** The applicants say the data from the Electronic Chart Display and Information System (“ECDIS”) on the *Vigilant* (which was wrongly not disclosed at trial), and specifically the radar data, show that the *Galwad* never crossed behind the *Oriane* or came close enough to her to make cooping of the drugs possible in the time available.

8. The *Vigilant*’s ECDIS data, and also data now obtained from FleetMon (a shore-based supplier of AIS data, like QPS), include records for the *Oriane* for the 11-minute period of the gap in the QPS data. The Court finds that the data now available support, in fact substantially improve, the prosecution case that (a) AIS-based positional data for the *Oriane* was and is accurate and reliable, and (b) the *Galwad* therefore can be seen to have put herself in the right place at the right time, and to have manoeuvred in the right way, for cooping items dropped from the stern of the *Oriane* as she passed. The radar-based data from the ECDIS can be seen to contain an error, correcting for which results in a match with the AIS data. The Court finds that expert evidence the applicants wished to use to cast doubt on that conclusion is not credible.
9. The Court’s conclusion on the vessel movements is reinforced by other matters, including the following:
  - (i) It was common ground at trial, and it was Green’s own evidence, that the *Galwad* was indeed steered and manoeuvred in the vicinity of the *Oriane*. Green said that he was mapping the sea bed for the purpose of possible future fishing, an explanation he did not give the police in interview (when, instead, he gave a substantially false account of the *Galwad*’s overnight trip on 29-30 May 2010). The Court concludes that Green’s description of what the *Galwad* did – how he navigated her, relative to the *Oriane* – was his actual, clear and detailed recollection; it was not merely reconstruction on his part.
  - (ii) Payne, like Green, told significant lies in interview about the overnight trip; Beere also lied in interview, about how and when he met Dresic, Austin and Dugic, until he was confronted with CCTV evidence.
  - (iii) SOCA Cdr. Bonfield’s command room log, noting field observations called in by those on board the *Vigilant* as part of *Operation Disorient*, recorded the sighting at the critical time on 30 May of a “possible ‘daughter vessel’ at the stern of *MSC the Oriane*”, seen to cross from North to South of the stern of the *Oriane*. The Court finds, as the applicants themselves submitted, that that must have been the *Galwad*.
  - (iv) The satellite phone on board the *Galwad* made and received calls at critical points during the voyage, in particular at key points during the manoeuvring in or near the wake of the *Oriane*. The calls were to and from the phone of Beere and another phone on the mainland associated with Dugic. Those phones were

co-located with another phone which was in contact with a Dutch telephone number at significant times during the voyage. Beere's phone was also in contact with a phone associated with Austin, who was convicted at a subsequent trial (Dugic was never located to face charges). The phones associated with Dugic and Austin and the 5034 phone stopped being used at the same time on 31 May 2010 in the vicinity of Gatwick Airport soon after Green, Payne and Dresic had been arrested.

- (v) An expert report not available at trial, on the likely drift effect experienced by packages, if dropped by the *Oriane*, suggests a drift path exactly matched by the *Galwad*'s path during her very slow speed 2½ minutes a little after 00.30 on 30 May 2010.

**Ground 2:** The ECDIS data show a small vessel other than the *Galwad* (radar target A50), heading in the direction of Freshwater Bay shortly after the *Galwad* left the Bay for Yarmouth on 30 May 2010. This could have been a high speed small craft such as a RHIB. The applicants contend that this was either another suspect vessel that could have dropped the drugs, or a law enforcement RHIB that did not spot them, either of which casts doubt on the *Galwad* being the immediate source of the drugs found in the Bay the next day.

10. There is no evidence whatsoever of any law enforcement vessel other than the *Vigilant* being in the vicinity at the relevant time (and the *Vigilant*'s own RHIB was not deployed until about 21.00 on 30 May 2010). The applicants' alternative case that target A50 was another suspect vessel is speculation. In any event, the evidence at trial was that, after the *Galwad* left Freshwater Bay, the Bay was not kept under surveillance until the drugs were found the following morning, and there was evidence of other vessels being in the vicinity. The argument that another vessel might have dropped the drugs was deployed by the defence at trial, the issue was fully litigated, and the jury must have rejected the suggestion.

**Ground 3:** The applicants rely upon the entries in Cdr. Bonfield's log about a possible daughter vessel at the stern of the *Oriane* contending that if that was the *Galwad*, then she was observed but discounted as a vessel of interest. It is contended that the ECDIS data assist in equating that sighting with the *Galwad* so the applicants were deprived of the possibility of arguing that the sighting supported their case that the *Galwad* had not coopered the drugs.

11. There is a tension between Grounds 1 and 3, because Ground 3 relies on the fact that the *Galwad* was seen to be in close proximity to the stern of the *Oriane*, undermining the idea that there might now be some real room for doubt about that (the case advanced under Ground 1).
12. The defence made a tactical decision at trial that the jury should not know that the *Oriane* was under surveillance by the *Vigilant*, though well aware that there would be no evidence at trial directly implicating the *Oriane* in carrying drugs and no eye-witness evidence of cooperating, even when thinking that the possible daughter vessel identified by the *Vigilant* was not the *Galwad*. The Court concludes that it is fanciful to suppose that the defence might have considered for a moment allowing the jury to know not

only that the *Oriane* was under surveillance as she was, but also that, as part of that surveillance operation, the *Galwad* was identified as a possible daughter vessel (albeit with no eye-witness observation of any drugs drop or pick-up), unless there were some real room for doubt whether the *Galwad* got close enough for cooping to be a possibility. But, as summarised under Ground 1, there was not and is not room for such doubt.

**Ground 4:** A UKBA Britten Islander plane, with three Border Agency officers on board, was used as part of *Operation Disorient*. The plane's log, disclosed at trial, stated that it took off from Bournemouth Airport at 18.00 and then saw the *Galwad* near the Needles on its way back to Yarmouth at 18.08. The aircraft camera operator, Mr Whittall, who was a witness at trial, did not mention flying over Freshwater Bay in his evidence, but radar records in the ECDIS data showed what was likely to be a single light aircraft flying over the area at 18.02. The applicants contended that if this was the UKBA surveillance aircraft, its failure to notice 250kg of cocaine in the Bay, minutes after its alleged deposit by the *Galwad*, is implausible so as to cast doubt on this central event alleged by the prosecution.

13. The Court finds no reason to doubt the log completed at the time by those on board the aircraft and disclosed at trial. It shows the take-off time from Bournemouth Airport as 18.00 and contains what the Court considers to be a pre-flight weather check record for 17.45. There is nothing in the log to suggest that the aircraft flew over Freshwater Bay and Mr Whittall's statement to the police of 15 June 2010, some two weeks later, does not mention having done so.
14. The applicants seek to rely upon a draft for a statement from Mr Whittall prepared in the context of an IPCC inquiry in 2013, but when that statement was finalised the draft wording upon which the applicants sought to rely for a suggestion that the aircraft may have taken off earlier than recorded in the contemporaneous flight log was not included. That suggests that either Mr Whittall was not prepared to say what had been in the first draft or he could not remember the time when they took off. Either way, this does not support the applicants' case. One is left with the log.
15. Even if it were arguable that the aircraft seen on the radar flying over the Bay at 18.02 was the UKBA plane, the Court does not consider that that would cast real doubt on the prosecution case that it was *Galwad* deposited the drugs. The aircraft was tasked with finding the *Galwad* and keeping her under surveillance, at a time when it was not appreciated the drugs had been deposited in the Bay. When the aircraft crew located the vessel, she had left the Bay and was near the Needles. Even if the plane flew over the Bay, a failure to see the drugs is not surprising.
16. Yet further, the failure to spot the drugs from the air (if there was one) would be only one piece of evidence any jury would consider in the context of a strong body of circumstantial evidence for the prosecution case that it was indeed the *Galwad* which deposited the drugs in the Bay.

### **Conclusion**

Standing back and looking at the body of evidence available at trial as well as the further evidence now available, and recognising that the evidence is circumstantial, the Court concludes that this was a compelling prosecution case of conspiracy to import cocaine, and that

the Grounds of Appeal do not begin individually or collectively to cast doubt on the safety of these applicants' convictions.