

11th July, 1985.

A.G. -v- Patrick David McGrath.

Appeal against conviction: Article 15  
Road Traffic Law.

BAILIFF: "The Court dismisses the appeal. The Court wishes to say straight away that Mr. McGrath was extremely frank at the Police Court. He could have said that a rabbit, dog or a cat had run across his path and it might very well be that that would have been an explanation which the Magistrate would have found the prosecution could not dispute. However, Mr. McGrath was extremely honest and frank and it is on that basis that the Assistant Magistrate had to deal with the case and on that basis of course that we have to deal with the appeal. There is no doubt about it that the Assistant Magistrate, although he did not give reasons at the time of making his decision, nevertheless does appear to have considered that there was no certain explanation as to how the accident or what caused the accident - there was only speculation. The most likely cause put was the cause of falling asleep. Now, it is put to us that if that was the cause and certainly it is the most likely cause mentioned by Police Constable Whitehouse, then it is put to us that it was incumbent upon the prosecution to show that Mr. McGrath felt tired before he suddenly fell asleep and that if they couldn't show that he felt tired before he suddenly fell asleep then there was no fault on the part of the defendant. We don't accept that - it is a pity of course that we are not able to read the whole of the case, the two cases mentioned on page 254 of Wilkinson - what we do notice is, however, that the last sentence or the last two sentences relate to reckless driving and in particular the last sentence says "it is submitted that a person cannot be convicted of reckless driving if he falls asleep, unless it can be shown that there is evidence that there is a risk of his falling asleep, but nevertheless he persisted incontinuing to drive". Well, reckless driving of course, is a far more serious charge than that of careless driving and we quite accept that in the case of reckless driving it has to be shown that if the accident was caused by falling asleep then the prosecution would have to prove that there was a risk of his falling asleep and that he knew there was a risk of his falling asleep. We are not satisfied

that that applies in the case of careless driving. It is true that the first sentence talks about the driver who allows himself to be overcome by sleep, but we find it difficult to take the view that a man that falls asleep whilst driving has no premonition that he is tired. It is possible, of course, that there may be something medically wrong with him, but there is no suggestion that there was something medically wrong with Mr. McGrath which put him in the position of being the sort of person who falls asleep without knowing he is going to fall asleep when in the act of driving. That would be a very dangerous situation for a driver to be in if he was prone to fall asleep when he had no idea that he was tired in any way. We are bound to take the view that a man who falls asleep when he is driving a car is driving without due care and attention. We think the Magistrate was entitled to take that view. In actual fact the Magistrate appears to have taken the view that that was, in any event, pure speculation and that he had not been told of any good reason why the accident happened. He did have the report from Dr. Sparrow, but that was merely a possibility which we must assume that the Magistrate again regarded that as pure speculation and indeed we are bound to say that the report raises great problems if, in fact, every heavy smoker is liable to blackouts when driving a car, it does rather conjure up disturbing possibilities. So we have to consider whether the Magistrate was entitled, reasonably, to come to the decision he did and for the reasons we have given we think that he was. As I say, we recognise the fact that Mr. McGrath was extremely honest in what he told the Court and one would expect that on the basis of the explanation he gave, which was really speculation, we think the Magistrate was entitled to come to the conclusion he did. The appeal is dismissed.