

ROYAL COURT

9th January, 1989

Before: Commissioner F.C. Hamon and
Jurats Blampied and Bonn

Her Majesty's Attorney General

- v -

Duncan Edward Muir

Appeal against sentence of fines imposed
in respect of infractions of Articles 16(1)
and 3(1) (as amended) of the Road Traffic
(Jersey) Law, 1956, and one infraction
of paragraph 1 of Article 2 of the Motor Traffic
(Third Party Insurance) (Jersey) Laws, 1948 to 1977.

Advocate S.C.K. Pallot for the Crown
Advocate A.D. Robinson for the Appellant.

JUDGMENT

COMMISSIONER HAMON: The appellant in this case pleaded guilty to three motoring offences at the Police Court on the 15th December, 1988.

The facts are unremarkable. The appellant was arrested outside the Alexandre Nursing Home, Longueville Road. He had driven his girlfriend's car there. It was her place of work. On later examination he was found by

the police doctor to be under the influence of drink (the analyst's report later showed that he had 179 milligrammes of alcohol in 100 millilitres of blood). He had no valid driving licence and was therefore not insured. He was charged with an infraction of Article 16 of the Road Traffic (Jersey) Law (driving under the influence), an infraction of Article 3 of the same law (driving without a valid driving licence) and an infraction of Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Laws, 1948 to 1972 (driving whilst uninsured).

He had arrived home at the address that he shared with his girlfriend, (who, as owner of the car, was also charged) and not finding her at home, used her car to drive to the Police Station. There were other more serious matters under investigation. Not finding her there and having spoken to the Desk Sergeant, he had then driven to her place of work. The fact that he might have used the telephone did not apparently occur to him.

He had been disqualified from driving in England on the 28th May, 1987, again for having no insurance, but his period of 15 months disqualification there had come to an end and his English licence had apparently revived. He had fallen into the common error of believing that he had a period of grace before he had to apply for a Jersey licence. This of course is not the case and we cannot stress strongly enough that unless a person is a visitor to Jersey, he or she is obliged by law to obtain a Jersey driving licence before driving on the Island roads. There is of course no concessionary period and ignorance of the law is no defence. It should be pointed out in passing that the appellant had also admitted to driving a car in Jersey on the 9th December.

He was represented by counsel and all possible factors in mitigation were put to the Relief Magistrate who stated that he accepted the explanations given to him. In sentencing him the Relief Magistrate said this: "Now, Mr. Muir, please stand. In your case as it is an offence of driving under the influence of drink there will be a fine of £170 or 44 days, and you will be disqualified from holding or obtaining a licence for seventeen months. There will be costs of £52.50. On the second offence, bearing in mind what your counsel has said, there will be a fine of £25 or six days and on the third offence, again I have accepted your explanation,

subject to what I have said and I hope that you will have taken the hint. There will be a fine of £40 or eleven days, so that deals with you".

The appellant now appeals against his sentence.

The principle that must guide this Court was stated by the Court of Appeal in A.G. -v- Gorvel 1972-73 J.J. Volume I part 4.

"The practice of this Court in considering appeals against sentence is to change a sentence only if satisfied that it is either manifestly excessive in the circumstances of the case, or for some reason wrong in principle".

New grounds of appeal were filed by the appellant's advocate on the 15th December. We understood these grounds to say that because the fines totalling £235 were totally beyond the appellant's means, he has to serve in default a prison sentence of 61 days. It is contended that the prison sentence is excessive for a first offender. The appellant asks the Court to vary the sentence imposed upon him to one of imprisonment (that is presumably a short term of imprisonment instead of a fine) or to give the appellant time to pay the fines imposed upon him. The appellant uses these words: "Such period of time to commence after his eventual release from custody".

This was presumably because at the time of the hearing on the 15th December the appellant was remanded in custody pending his appearance before the Royal Court on the other more serious charges.

The Relief Magistrate clearly wished to impose a fine and not a custodial sentence. It would, in our view, have been quite wrong if he had imposed a custodial sentence because the appellant had not the financial wherewithal to pay a fine. We are not minded to substitute a custodial sentence for a fine. Indeed, under Article 3 of the Road Traffic (Third Party Insurance) (Jersey) Law, 1948, the law prescribes only a fine. A custodial sentence is not possible in that case.

The Relief Magistrate should undoubtedly have gone into the question of the appellant's means. We think that he should have done that before imposing a fine. If he had imposed the fines and then gone into the question of how the appellant could pay that would have been the wrong way of dealing with the matter but it might have helped. We can see nothing whatsoever to criticise in the fines themselves: nor can we see anything worthy of criticism in the periods of imprisonment in default. These are not alternatives to fines: nor in our view should the fines be fixed at such a high level so that which the Court has decided not to impose (namely a custodial sentence) will almost certainly follow.

The Relief Magistrate did not enquire at any time into the accused's means. It must be said, however, that he was not helped in any way by counsel. We are certain that even though we are of the view that the Relief Magistrate should have considered the means of the appellant before imposing the fine, he might still have granted time to pay had the matter been raised with him. There was opportunity to do so.

We are going to allow the fines to be paid at the rate of £20 per week, such payment to start one month after the appellant's eventual release from custody. Such time as the appellant has already spent in custody for non-payment of the fines must be taken into account.

Authorities

Thomas - Principles of Sentencing 2nd Edition p.p. 320 - 323.
A.G. -v- Gorvel 1972-73 J.J. Volume 1 part 4.