ROYAL COURT

13th March, 1989

Before: The Bailiff and
Jurats Coutanche and Gruchy

Police Court Appeal : Philip Robin McIlwraith

Appeal against conviction by the Police Court on an offence under Article 16 (as amended) of the Road Traffic (Jersey) Law, 1956. The appellant had been sentenced to a term of imprisonment of 10 days and had been disqualified from driving for a period of 3 years. Bail of £50 had been granted, pending appeal. The conviction under Article 16 was one of 4 convictions recorded against the appellant on the same day under various Articles of the Road Traffic Law.

Advocate S.C.K. Pallot for the Crown
Advocate A.R. Binnington for the appellant.

JUDGMENT

THE BAILIFF: The Magistrate had to decide whether to accept the accused's story or not, and if he rejected it, whether he could properly convict on the totality of the evidence. It should be said, of course, that although one usually uses the colloquial phrase 'drunk in charge', that is not the test - the test is whether a person is impaired to such an extent that he or she does

not have proper control of his or her vehicle. Mr. Pallot was quite right to stress that an accident in the circumstances of this case could be evidence consistent with the accused having had his ability impaired.

There are a number of matters which Mr. Pallot stressed. First, that alcohol was consumed in the afternoon - that is not denied. Secondly, that there was no rational explanation given to the police at the first opportunity by the accused as to how the accident had happened. Thirdly, that the accused did not contact the police and had been driving for long enough to know, arising from the questions put to him by the Magistrate, that Article 27 would have required him to contact the police. Fourthly, that there is some inconsistency in the evidence as to what he actually consumed after the accident, whether it was one glass or a quarter of a bottle of brandy. Fifthly, that it is said that he drank the quarter of a bottle of brandy because he was in a state of shock. It was pointed out by Mr. Pallot that the seriousness of the accident itself was not very great, although the damage to the car was quite substantial; it was unlikely, Mr. Pallot submitted, that a man who was in control of himself, a young man, would have felt in a state of shock for such a long time so as to require him to drink what was quite a considerable amount of alcohol. Lastly, even if the Magistrate, whilst discounting the story of the appellant having drunk a quarter of a bottle of brandy, accepted his story that he had drunk one glass of brandy, that would not be sufficient to render nugatory the effect of other alcohol consumed before the accident.

Mr. Binnington, of course, has drawn attention to the evidence for the defence which he says is equally consistent with the accused's story as is that for the prosecution and that it is for the prosecution to prove what it alleges beyond all reasonable doubt. As regards Article 27, he contends that the Court should not place too much importance on the conviction under that Article because that Article provides that the burden of proof lies with the defendant who is charged under it.

Mr. Binnington stressed that his client was unfit to drive when he was arrested but he pointed out that Mr. Power would have been prepared to drive with him and likewise his wife and that his wife supported the explanation that her husband was in a shocked state. He pointed out that if

the Magistrate accepted the evidence of Mrs. McIlwraith as regards the half glass of brandy, he should also have accepted the evidence that her husband was in a fit state to drive when he came home.

Be that as it may and taking a wide view of the evidence, which the Magistrate is entitled to do, (and as we have said on many occasions, he had the opportunity of seeing the witnesses and hearing them and assessing their credibility) we cannot find that there was insufficient evidence which would have entitled the Magistrate to convict. Therefore, in our opinion, he was entitled to convict and the appeal is accordingly dismissed, with costs.

We come now to the question of sentence. Unless you wish to address us, Mr. Binnington, we are minded to substitute a fine for the sentence of imprisonment.

First, it is clear from the transcript that the learned Relief Magistrate regarded himself as bound to impose a sentence of imprisonment for a second offence under Article 16. That is not the law - it is practice and a perfectly sound practice, but some regard must be had as to the time between the first and second offences. In this case it is over five years and that is a matter which, according to the transcript, the learned Relief Magistrate does not appear to have taken sufficiently into account. We therefore think that it would be right for us to allow the appeal against sentence and to substitute a fine, which we do. However, because we think this is quite a serious offence, we are going to make the fine reasonably substantial. The fine for a second offence is a maximum of £500. We are going to impose a fine of £400 and in default we will not increase the sentence which was imposed as that would be wrong. Therefore, it will be £400 or, in default, ten days' imprisonment.

The other matter I wish to raise is that I think it is unwise for a Court to conduct experiments in relation to roads and such like in the absence of the accused and counsel.

n.b: no authorities.