

ROYAL COURT

10th April, 1989

Before: Commissioner F.C. Hamon and
Jurats Myles and Orchard

Police Court Appeal : Robert Edward Moignard

Appeal against conviction by the Police Court
of one offence under Article 16 of the Road
Traffic (Jersey) Law, 1956.

Advocate J.A. Clyde-Smith for the Crown
Advocate P.C. Sinel for the appellant.

JUDGMENT

COMMISSIONER HAMON: If I can echo the words of Lord Goddard:

"It is constantly said, although I am not sure that it is sufficiently remembered, that the function of a Court of Appeal is to exercise its powers when it is satisfied that the judgment of the Court below was wrong not merely because it is not satisfied that the judgment was right".

We have to say, Mr. Sinel, that we think that this was a hopeless appeal.

We are completely convinced that the Magistrate had more than sufficient evidence to weigh in the balance and that he was entitled to reach the conclusion to which he came.

There is firstly the evidence of an experienced police constable on mobile patrol as to the driving of the appellant before he was stopped. There is the evidence that the police constable gave when the appellant got out of the car and there is the evidence of the police doctor. It does seem to us that the police doctor did his best to try to persuade the appellant to have a blood sample taken. I refer to page 14 of the transcript where Dr. Holmes says:

"I asked him more than once and I asked him that in order that he could refute my opinion. However, he still refused".

It is all very well to say that police doctors are so called because they are in the pay of the police. We would utterly reject that contention. A police doctor is a professional man and we have no reason to doubt that Dr. Holmes was acting professionally throughout the whole of the examination that he carried out.

We would also of course refute the suggestion that policemen are paid in order to obtain convictions. This is an allegation that is often made against the police by laymen; it is not the sort of remark that one would expect to be heard in this Court by counsel who is also an Officer of the Court.

One appreciates and in fact one sympathises with Mr. Moignard that he had his own version of what happened, but it does seem to us that the Magistrate was perfectly entitled, in weighing matters in the balance, to accept the evidence of the prosecution as opposed to the evidence of Mr. Moignard and his brother. The loss of a licence in these circumstances is always tragic for someone with an absolutely clean record. The Magistrate obviously did his best to make the penalty as low as he could whilst complying with the strictures imposed upon him by the legislature.

We have carefully studied all the authorities given to us by both counsel, but we have no doubt whatsoever that there is nothing in this appeal and in particular the one point which I have not covered, namely the fact that the police doctor was in Court for a short while while evidence was being given. We are quite satisfied on the authorities which have been passed up to us by Mr. Clyde-Smith that no prejudice was suffered by the appellant in the circumstances outlined. Therefore, the appeal is dismissed and we award taxed costs against the appellant.

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Authorities referred to:-

Drink, Drugs and Driving by H.J. Walls & A.R. Brownlie (2nd edition), at pp 46 and 169.

Archbold (Criminal Pleading Evidence & Practice) (43rd edition), para 16-1, re. "General rule - One witness sufficient"
and para 20-267a re. "Evidence of drink or drugs"
and para 4-251 re. "PRESENCE IN COURT BEFORE GIVING EVIDENCE".

Roger Albert Le Crom, Appellant -v- The Constable of St. Brelade, Respondent (1975) JJ 197.

1985-86 JLR, N.4 re. "ROAD TRAFFIC - DRIVING UNDER INFLUENCE OF DRINK - blood tests - reasonable ground for refusal".

Police Court Appeal : George Arthur Lush - JJ 17th December, 1985, and 1985-86 JLR N.18.

R. -v- Dooley (1964) AER 178.

Wilkinson's Road Traffic Offences (5th edition) at p.119 et seq re. "Refusal to provide specimen for test".