

ROYAL COURT
(Samedi Division)

08 May '90

66

Before:

F.C. Hamon, Esq., Commissioner,

assisted by Jurats: Vint and Le Ruez

Police Court Appeal:

The Attorney General

-v-

George David Flynn

Appeal, by way of case stated, by the Attorney General.
Flynn had been acquitted before the Magistrate's Court
on one charge of being drunk on licensed premises.

Counsel:

Advocate S.C. Nicolle, Crown Advocate

Mr. Flynn not present

JUDGMENT

The Commissioner: This appeal is unusual, because it is by way of
case stated and the accused has had in fact no notice that these

proceedings are taking place here today. A letter delivered to his last known address was returned marked 'gone away'. However, Miss Nicolle has convinced us that all we need to do is to make a decision on whether or not the learned Magistrate, Mr. Short, was correct in the Judgment that he gave when he acquitted the accused who was charged, under Article 83 of the Licensing Jersey Law 1974, of being drunk on licensed premises, and, whatever our decision today, the acquittal will stand.

As I have said this is an Appeal by way of case stated from a decision of the Magistrate, Mr. Short, which he made on the 30th November, 1989. On the 29th April, of that year, at about 4.45 p.m. Sergeant Le Troquer and P.C. Park entered the lounge bar of the Bath Hotel; they were carrying out a routine licensing check. The public bar was very busy at the time with football results being announced on the radio. Having carried out a routine check there, they moved into the lounge bar which was not so busy. There they found the appellant (I'll call him the appellant for the purposes of this hearing) who was described as being almost slumped on the bar counter. The two police officers engaged him in conversation; P.C. Park said that he was unable to understand what he was talking about. His speech was slurred, his eyes were blood shot and dilated, his pint of beer, of which something like three quarters remained unconsumed was taken from him by the barman, without him apparently noticing that it was gone, and his money was eventually returned to him. He became argumentative but was allowed to return home. The police officers said that he was neither drunk and disorderly nor drunk and incapable, but, in accordance with Article 83 of the Licensing Jersey law 1974, that he was drunk on licensed premises. When the police officers escorted the appellant outside, they noticed that his speech was very slurred and his breath smelt of intoxicants.

He represented himself and strongly denied that he was drunk and told the learned Magistrate that he had already consumed four pints of beer. He negotiated the steps of the Bath Hotel and in busy traffic walked home along the pavement of Bath Street, watched by

the two police officers for some twenty or thirty yards. In his case stated, the learned Magistrate said this: "The question for determination by the Royal Court appears to be whether Flynn was drunk, according to the Oxford Dictionary definition: that he had drunk intoxicating liquor to an extent which affects steady self-control; intoxicated, inebriated, overcome by alcoholic liquor; or whether he has had too much to drink, should have been stopped and sent home when he was".

Miss Nicolle found for us a definition taken from Anthony and Berryman's Magistrate Court Guide 1979, from section 12 of the English Statute, the Licensing Act 1872, where the charge is: being found drunk in any highway, public place or on licensed premises. And, there the heading marked "Legal Notes and Definitions" defines drunk in this way: "Typical evidence of drunkenness is strong smell of drink, falling over, swaying, stumbling, showing evidence of uncoordination, slurred thick speech, rapid pulse, redness in the face, glazed expression, drowsiness or semi-coma and no evidence of any other cause for these symptoms. It is not necessary for conviction that the defendant is incapable of taking care of himself: if he is in such condition he is liable to arrest". And, Miss Nicolle reminds us that perhaps there are three facets of the offence; drunk and disorderly, drunk and incapable, and just drunk, which is the provision of the Statute which we have to examine here today.

Now, on Flynn's incoherent speech I think it might be useful if we looked at just two passages of the transcript. At page 14, paragraph D. the witness says this: "It's going to be equated when somebody speaks three or four languages that they analyse the problem, they may analyse it in English and not finding any solution having the effect of a stone in a shoe which will change into another language to find another aspect of the case and then change into another language whether or not the Dutchman has a solution, the Frenchman has". And, there are many other examples of the accused using his own language and speaking, as we found on reading the transcript, in what might be described as a positively

incoherent way when presumably at the hearing before the Police Court Magistrate he was sober.

We are impressed by the fact that at the age of forty this mature man, although he has a record of a series of quite serious offences and was in fact remanded in custody for further offences for which he was charged, has never been accused of any offences connected with alcohol and we feel that Mr. Short said all that needed to be said about the discretion that he exercises in the Police Court at page 18. "...I shall acquit you because you were sufficiently on your feet to get home without the police having to arrest you and put you in a cell. So, Mr. Flynn, you have had your day in Court and you are acquitted. I'm afraid you can't go through because you are in custody..." And, again at the top of that page he says: "I think I can reach a conclusion on this case without the help of your witnessess or witness. We have a rough and ready rule that if a man can get home safely, although he may stagger a bit, then he is let go home". It is difficult for us to say that the Magistrate was wrong in law and we can see all sorts of imponderables occurring if we were now to lay down the fact that the Magistrate using that rough and ready rule had not exercised his discretion correctly. The learned Magistrates throughout most of their working day have to make assessments of people who are under the influence of drink and very often, and in the majority of cases, they reach the correct decision.

We cannot say that this is the sort of case in which we would wish to interfere with the discretion of the Magistrate and despite the evidence of the two police officers we are not going to interfere with his discretion in this case. And, therefore we cannot say that the learned Magistrate has erred in law, and therefore, Miss Nicolle, we have to say that the reference on the case stated does not succeed.

Authorities

Anthony and Berryman's Magistrates' Court Guide, 1979, by C.J.
Acred: p.48.
Police Court Appeal: Gary Paul Edgeworth (23rd April, 1990) Jersey
Unreported.