

ROYAL COURT
(Samedi Division)

25th July, 1994.

151.

Before: The Deputy Bailiff, and
Jurats Blampied and Herbert

POLICE COURT APPEAL
(The Magistrate).

Patricia Dorothy Oliver

- v -

The Attorney General

Appeal against a sentence of a fine of £500 or three weeks' imprisonment in default of payment, and three years' disqualification from driving imposed on 29th April, 1994, following a guilty plea to one charge of contravening Article 16A(1)a of the Road Traffic (Jersey) Law, 1956, (as amended).

Appeal against disqualification from driving remitted to the Magistrate's Court; appeal against fine dismissed.

S.C.K. Pallot, Esq., Crown Advocate.
Advocate S.J. Willing for the Appellant.

JUDGMENT

5 THE DEPUTY BAILIFF: The Court has before it four appeals from decisions of the Police Court for offences of driving with excess alcohol in the breath. All cases involve high degrees of intoxication and in all but one case the learned Magistrate imposed a custodial sentence.

10 We have looked at the guidelines issued by the Magistrate earlier this year, although those guidelines are effective only insofar as one case is concerned, but we wish to say that we can see no reason to disagree with those guidelines.

To drive with excess alcohol in the body is a serious offence. Whether or not an accident results is often a matter of chance. Clearly the higher the level of intoxication, the greater

the likelihood there is that injury or death might be caused to an innocent motorist or pedestrian. The principle of short custodial sentences in bad cases of driving whilst intoxicated appears to us therefore to be entirely appropriate.

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Two of the cases before us this morning involved women who are single parents with young children. In one case there is a child of six and in the other case there are three children aged 13, 11 and 10.

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The existence of young children is undoubtedly a factor to be taken into account by the Magistrate when imposing sentence. It is by no means always the case that the existence of children is a factor which should persuade the Court not to impose a custodial sentence. Each case must be looked at against its individual circumstances. Much will depend upon the age of the children and the availability of others who would be able to take over the task of caring for the children whilst the mother was serving a prison sentence.

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We come therefore to the individual appeals.

The first appeal is by Patricia Dorothy Oliver who appeals against the sentence imposed for an infraction of Article 16A(1)a of the Road Traffic (Jersey) Law, 1956, when she was fined £500 and disqualified for holding a driving licence for a period of three years.

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Dealing first with the question of the disqualification the Magistrate was clearly under the misapprehension that he was bound to impose a disqualification of at least three years.

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Article 16A of the Law provides as follows:

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"(1) If a person -

(a) drives or attempts to drive a motor vehicle on a road or other public place, or

(b) is in charge of a motor vehicle on a road or other public place

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after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, he shall be guilty of an offence and liable to a fine not exceeding £2,000 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

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(2) A person convicted of an offence under paragraph (1) of this Article shall, unless the Court for special reasons think fit to order otherwise, and without prejudice to the power of the Court to order a longer

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period of disqualification in the case of a first offence be disqualified for a period of 12 months and in the case of a second or subsequent offence for a period of three years for holding or obtaining a licence."

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An offence of driving whilst unfit under Article 16 of the Law is not an offence under paragraph (1) of Article 16A.

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This appellant was convicted of an offence under Article 16 on 22nd October, 1981, but that offence did not oblige the Magistrate to impose a disqualification of three years. The learned Magistrate therefore misdirected himself on this point.

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As to the fine, we are satisfied that the fine of £500 was entirely reasonable in all the circumstances. The learned Magistrate clearly took account of the explanation given by the appellant as to why she drove the car on the evening in question and he imposed a fine rather than a custodial sentence, notwithstanding the high level of intoxication, in the light of the particular explanation given by the appellant for her behaviour. Therefore we dismiss the appeal against the fine.

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So far as the disqualification is concerned we were invited by the Crown Advocate to invoke our powers under Article 17 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1960, to remit the matter to the Police Court. We think that this is the sensible option.

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The learned Magistrate heard the evidence and is aware of all the background to the offence and we think he is best placed to decide, having regard to the matters which we have decided, what is the appropriate length of disqualification. We therefore, in exercise of that power, quash the disqualification of three years, and remit the matter to the Magistrate in order that he may consider the appropriate length of time in the knowledge that he has a discretion and is not bound to impose a disqualification of three years.

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Authorities

Le Monnier -v- A.G. (26th April, 1989) Jersey Unreported; (1989)
J.L.R. 170