

ROYAL COURT

20th April, 1988

Before: The Deputy Bailiff, assisted by  
Jurats Vint and Le Boutillier

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Police Court Appeal: James Bunyan

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Numerous infractions of the Motor Traffic (Jersey) Law, 1956, and related offences including charges of driving without a licence, driving uninsured, taking and driving away a motor vehicle without consent, tampering with a motor vehicle, malicious damage to a motor vehicle, stealing from a motor vehicle and stealing a motor vehicle.

The appellant, a twenty-seven year old labourer and native of Glasgow had only recently arrived in the Island and had committed the offences whilst heavily intoxicated with alcohol. He had a previous criminal record, including convictions for criminal damage, theft and possession and supplying of controlled drugs.

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Advocate M. St. J. Birt for the Crown  
Advocate D.E. Le Cornu for the appellant

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JUDGMENT

DEPUTY BAILIFF: Insofar as the totality of the sentence is concerned, this appeal is substantially without merit.

This appellant had been in Jersey for a period of only four weeks - he chose to abuse this Island's hospitality by committing no less than fifteen criminal offences involving a great deal of dishonesty, some damage and a great deal of inconvenience, and probably injury and distress to innocent vehicle owners.

The Magistrate gave full credit for the appellant's plea of guilty - had it been otherwise, the appellant would have <sup>been</sup> committed to this Court and would undoubtedly have received a more severe sentence.

The appellant's dishonest intentions are clearly apparent from the fact that the more valuable items stolen found their way to his bedroom - the set of golf clubs and the tools were found there. The tools were found under his bed; an obvious attempt to conceal them.

Whilst some of the cars had been left unlocked, others were broken into with a hammer, itself stolen from a vehicle.

To steal a craftsman's tools, and thus possibly affect his ability to earn his living, is a particularly mean type of theft.

The appellant also stole a cheque book, a bank cash card and a set of keys; all items capable of being used to assist further crime, as well as a driving licence and a certificate of motor insurance.

The offences were committed during two consecutive nights. His only defence was that, on both occasions, he was intoxicated. It cannot be said too often that self-induced intoxication, far from being mitigation, is an aggravating factor.

In view of the publicity being given lately to drink-orientated crime, I propose to read from the appellant's statement. On the first of the two nights, a Saturday, the appellant had been drinking since about 6 o'clock that evening at the "Blue Fox". He was getting pretty drunk, so just after

midnight he left the "Blue Fox" to go home. In other words, he had been on the same licensed premises for in excess of six hours - and on the way home he committed the first nine of these offences.

On the next day, the Sunday, the appellant went to the "Claymore" at about one o'clock p.m. for a meal and he started drinking there. At about half past four he went to the "Blue Fox" again, when it opened, and stayed there until late in the evening, and then went on to "The Tube", underneath "La Buvette". He left there at about twelve o'clock midnight and went up to the area where he committed all the other offences. In other words, the appellant had been on licensed premises almost continuously for some eleven hours.

The Magistrates might care to enquire, in each case where drink is involved, where the accused had been drinking during the previous hours. It would be interesting to see whether particular premises would be thus exposed.

This Court will give every support to the Magistrates if they adopt a more severe sentencing policy than they have in the past with regard to drink orientated and public order offences. The Court hopes that this will be both a warning, and a reassurance, to be noted by the public, and the licensed trade.

Now, having said that, there are certain understandable errors in the Magistrate's sentencing in this case which have to be considered.

To begin with, this Court finds that a total sentence of imprisonment of six months is not a day too long. But after charge six the Magistrate said, and here I quote: "All those sentences of imprisonment are concurrent with each other". He meant Counts 2, 4 and 6. He then made the sentence on Count 9 consecutive and those on Counts 10, 13 and 15 concurrent. He then said: "All those imprisonment sentences are concurrent, but that must be consecutive to the first series which I've mentioned".

In other words, the Magistrate treated Counts 1 to 6 as one series and Counts 7 to 15 as a second series. To that extent he was in error, because Counts 1 to 9 were the first series and Counts 10 to 15 were the second series, one night later. So that, applying the 'one transaction rule' quoted to us by Mr Le Cornu, the cut-off point should have been Count 9 and not Count 6. However, applying the principles quoted to us, Count 10, taking and driving away, is of a different character from theft and therefore does not form part of the same transaction as Counts 13 and 15 in the same series. And the sentence on Counts 13 and 15, concurrent with each other, can properly be consecutive to Count 10 and, further, consecutive to the sentence on Counts 2, 4, 6 and 9.

Thus, applying those principles, we would have the following situation:-

On Count 2 - 1 month's imprisonment; on Count 4 - 3 months' imprisonment concurrent; on Count 6 - 3 months' imprisonment concurrent; on Count 9 - 3 months' imprisonment concurrent, instead of consecutive as stated by the Magistrate; on Count 10 - 1 month consecutive, instead of concurrent as stated by the Magistrate; on Count 13 - 2 months' imprisonment consecutive, instead of concurrent as stated by the Magistrate; on Count 15 - 1 month's imprisonment concurrent, making a total of 6 months' imprisonment and therefore no change to the total sentence.

Therefore, we adopt Thomas' Principles of Sentencing, 2nd Edition at p.53 and I quote:-

"Apart from occasional inconsistencies on specific applications, the Court sometimes upholds consecutive sentences which appear to offend the concept (that is to say the concept of the one transaction rule), on the ground that the totality of the sentence is correct and that no purpose would be served in making a formal variation which would leave the effective sentence unchanged".

We apply that principle and, because the totality of six months is correct, no purpose would be served in making a formal variation of the kind which I have described, which would leave the effective sentence unchanged.

Accordingly, we dismiss that part of the appeal that relates to the imprisonment.

We now come to the question of fines. On all the charges relating to tampering, the maximum fine was £100 and the appellant was fined £25, or one quarter only, of the maximum. These are in no way excessive.

On Count 12 - driving whilst uninsured the Magistrate imposed a fine of only £25 and a disqualification of only six months. We can understand this because the distance driven, some 25 yards, was very short. Nevertheless the insurance profession has expressed the view that, if there is to be a deterrent, the fine should exceed the insurance premium payable. We agree with that view and we wish to encourage the Magistrates substantially to increase fines imposed for offences of driving uninsured.

It follows that we find the fines imposed by the Magistrate were, in seven cases, reasonable, and in the eighth case, lenient.

There remains only the question of time to pay and imprisonment in lieu. In this case the Magistrate had no alternative but to impose fines for those offences where the only penalty prescribed by the legislature is a financial one. But we accept the general principles contained in the authorities submitted to us.

Fines imposed in circumstances such as these are subject to the general principle that there must be a reasonable possibility that the offender will be in a position to pay. There was no investigation of means. To give time to pay at the end of the initial sentence would hamper the chances, however slight, of rehabilitation.

Furthermore, we have the problem, here, of the Magistrate's maximum powers and the fact that consecutive imprisonment in default would mean that the appellant would serve a longer total sentence than would have been passed without the fines.

Therefore to that extent we allow the appeal - all the default imprisonments will be concurrent, to make a grand total of six months' imprisonment.

✓ Finally, Mr Le Cornu will have his legal aid costs.

Authorities referred to in the judgment:-

D.A. Thomas (2nd Edition) p.53 - "The one-transaction rule".

Other authorities referred to:-

D.A. Thomas (2nd Edition) p.55 (bottom of page, beginning "A series of thefts ...")

p.p. 320, 322 re: "The offender's means"

p.322 paragraph beginning "Fines imposed in circumstances such as these...".

Criminal Law Review, February, 1988 at p.128 - "R v. Matthews".

Emmens (1st Edition) p.119 et seq re: "Concurrent and consecutive sentences".

Cross (2nd Edition) p.22 et seq re: "Fines".

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