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ROYAL COURT

25th October, 1990 160

Before: The Bailiff, and
Jurats Coutanche and Gruchy

Police Court Apeal: James Walker

Appeal against conviction on charges of failing to produce a driving licence when requested by a Police Officer, failing to produce a certificate of insurance when requested by a Police Officer, using a motor vehicle uninsured, driving without due care and attention, driving whilst unfit through drink or drugs and failing to stop and report an accident.

Advocate S.C. Nicolle for the Crown
Advocate G.R. Boxall for the appellant.

JUDGMENT

BAILIFF: The appellant in this case was convicted by the learned Magistrate on a number of counts on the 31st May of this year, but the principal one which led to this appeal is that of a conviction of driving whilst impaired through drink or drugs in contravention of Article 16 of the Road Traffic (Jersey) Law, 1956. The events which gave rise to the prosecution in fact occurred nearly ten months before the case eventually came for trial but although that delay has caused the Court some misgiving, we were satisfied with the explanation given by Miss Nicolle and also by the defence, in the sense that the defence was not making issue of it, and we therefore disregard it.

But we repeat that it is desirable in what are really run of the mill cases like this to attempt to bring the parties to Court at the earliest possible time and some 10 months later is too late; in that period it is possible for witnesses to fail to remember what they saw particularly in a case of this nature where one of the principal witnesses was following the van in which it was said the accused was at night at 11 o'clock or thereabouts.

However, having said that we return to the main thrust of the appeal. The prosecution evidence below was this: Mrs. Hamon had seen the van being driven up Beaumont Hill in an erratic manner and had taken its number and she had also seen it being driven along Victoria Avenue as well. We need not go into the details, but she gave the number to the police and not very long after that two policemen, P.C. Cox and P.C. Buckfield, arrived at the house of the appellant after his number had been traced through the computer. When they arrived they found a white van outside, the engine was hot, there was a smell of alcohol in the cab where the driver would have been. They knocked at the door and they were admitted by Mrs. Walker and found Mr. Walker sitting in an upright position with his feet stretched out in front of him and a bunch of keys on the table next to him or in front of him.

There is no dispute that Mr. Walker was intoxicated. The evidence of the police sergeant who eventually saw him at police headquarters and the two policemen is quite clear on that point and has not been challenged.

The defence was that he had not been driving; that there were a number of people who had access to the van, one of whom could have had a key and that one in particular was a Mr. Crawford who had been working for the appellant and had in fact, it was said, been driving the van that day. He was, it was said, staying at the house at the time and it was he who had driven the van, it was he who had committed such offences as had been committed and not Mr. Walker.

Mr. Walker did not name Mr. Crawford when first seen by the police in his house; he did not name him at police headquarters. His failure to do so could be explained by his state. After he had been examined

at police headquarters his keys were kept, he was allowed to go and his keys were returned to him the next morning. His defence was that having returned to the house he sought out Mr. Crawford who admitted to him after a row that he (Mr. Crawford) had been driving the van. If that is so, Mr. Walker did not avail himself of that information to inform the police on the next morning, when presumably he was sober, and the bunch of car keys was returned to him. However, he was able to persuade Mr. Crawford to attend at Police Headquarters and all of them did so on the 28th September where they were interviewed by P.C. Cox who cautioned both Mr. Walker and Mr. Crawford.

Mr. Walker alleged that Crawford had been driving and Crawford acknowledged that by nodding his head. However, at no stage did he either there or at any later time to which I shall return in a moment, admit unequivocally that he had been the driver. Later P.C. Cox endeavoured to trace Mr. Crawford which eventually he did in a public house; he saw him on another occasion; and he also brought Mr. Walker again to Police Headquarters.

Eventually he had been obliged to arrest Mr. Crawford, although it is strange that he should do so if Mr. Crawford was not under suspicion and was merely a witness who was required to support or otherwise what Mr. Walker had been saying.

However, at the second confrontation (if I may so describe it) between Mr. Walker and Mr. Crawford, Mr. Crawford said absolutely nothing. Therefore the position was that Crawford had not made a direct admission to the Police that it was he who had been driving the van.

On the day of the trial the defence was asked whether they wished to call Mr. Crawford and they said they did not; he was therefore allowed to leave the Court.

The Magistrate therefore had the facts, as I have outlined them, before him. It is suggested by Mr. Boxall for the appellant that he also had before him what Mr. Crawford had said by way of indication, indirectly, that he had been driving and therefore the evidence of Mr.

Crawford was before him. We cannot accept that. There was no evidence of Mr. Crawford before the Magistrate. Mr. Crawford was not called and in any case his evidence was not subject to cross-examination.

Nevertheless, when the Court retired I directed the Jurats that they should approach this case in the manner in which the Magistrate would have approached it, although it is not clear from his notes that that is what he did. The approach is this: in a case of this nature the Magistrate, or in the case of a Jury trial, the Bailiff, must ask himself or direct the Jury as the case may be to consider whether the explanation of an accused might be true. Putting that to the Jurats, one Jurat felt that it might, the other Jurat rejected it and was satisfied with the findings of the Magistrate. It therefore falls to me to decide upon which side I can rightfully cast my deciding vote.

This is not a case of exercising mercy, this is a case of applying legal principles. I have not the slightest doubt in my mind that the Magistrate was entitled to come to the decision he did; that the explanation was not one that might be true and therefore I have by casting my vote with the Jurat who rejects the explanation find that the appeal should be dismissed by a majority. I think, Mr. Boxall, costs follow the event and costs will be awarded to the prosecution of this appeal.

Authorities referred to:

Cross on Evidence (5th ed'n) at pp 27-29, 52.