

ROYAL COURT

13th February, 1989

Before: The Bailiff, and
Jurats Coutanche and Gruchy

Police Court Appeal : Richard Hugh Le Boutillier

Appeal against conviction under Article 16 of
the Road Traffic (Jersey) Law, 1956.

Advocate S.C. Nicolle for the Crown
Advocate W.J. Bailhache for the appellant.

JUDGMENT

BAILIFF: On the 18th June, 1988, P.C. Fryer was on patrol, going up New St. John's Road, when he saw a car being driven carelessly, if not dangerously, mount a pavement for some thirty or forty yards. As a result of what he saw, P.C. Fryer stopped the car and spoke to the appellant who was driving. As a result of his being stopped the appellant was taken to Police Headquarters and was examined some threequarters of an hour later by the Police Surgeon. The Police Surgeon was unable to certify that in his opinion the appellant was driving under the influence so as to have the proper control of his vehicle impaired. On the other hand, two experienced Police Officers, the one who had stopped the accused and the Station Sergeant were satisfied that he was under the influence. However, there was this conflict between them and the Police Surgeon and it was a matter, of course, for the learned

Relief Magistrate to settle to his satisfaction.

The difficulty of this case is that there was introduced into it the possibility that the accused had been smoking cannabis, because cannabinoids were found in his urine. But the evidence of Mr. Holliday was that cannabis traces can be found in urine for up to three days after having been smoked. The evidence of the doctor was that if cannabis had been smoked by the appellant it would have to have been within the time when evidence was given by Mr. De Faye that he had been with his friend and no cannabis had been smoked and again the appellant indirectly denied smoking it within the relevant time.

There was therefore a conflict of evidence which the learned Relief Magistrate had to resolve. There are a number of observations the Court would like me to make. I am to say that the decision of the Court is by a majority. In the opinion of the majority of the Court the Magistrate should have excluded the question of cannabis altogether. There was insufficient evidence before him to justify him finding that the condition of the accused was due to a combination of cannabis and alcohol. Once you had excluded the cannabis you were left with the alcohol alone. So far as his driving was concerned the appellant gave an explanation that he in effect drove badly every time he crossed that yellow line by turning into the cemetery without stopping on the yellow line. The explanation coincided with what the policeman told the learned Relief Magistrate he had seen and it is something we do not think the appellant could have made up. Therefore there was an explanation which he gave and it was an explanation which the learned Relief Magistrate had to consider in the light of explanations in a criminal case, that is to say if he accepted the explanation then it was a matter which would entitle him to acquit the appellant under the circumstances or give an explanation of what he had done. If he did not exactly accept it but thought it might be true, again he had to come down on the side of the appellant.

There is some doubt in our minds as to whether the learned Relief Magistrate really was confused between the requirements of Article 16 of the Road Traffic (Jersey) Law, 1956, and a legal limit. We understand the question of the legal limit to be used in the Police Court for the purposes of not only looking at the amount of alcohol that a person has consumed, which

is of assistance in deciding whether to convict or not, but it is not overwhelming. Our law is different from England as we have said many times, but the figure is very often used as a yardstick as to whether a person should or should not go to prison, but that is a different aspect and we think there is a possibility, to put it no higher, that there was at the back of the learned Relief Magistrate's mind a question of this figure.

Therefore, looking at the facts as we find them, or the majority find them, we think there is a residual doubt in our minds and that it could therefore be said, as Mr. Bailhache suggested, that the Magistrate could not have been satisfied beyond reasonable doubt of the facts so as to justify a conviction. The appeal is therefore allowed, with costs.

n.b. no authorities.