174.

ROYAL COURT

16th October, 1989

Before: The Bailiff, and
Jurats Vint and Le Boutillier

Police Court Appeal: Denise Suzanne Rushton

Appeal against fines and a period of disqualification from holding or obtaining a licence of eighteen months imposed following convictions under Article 13A of the Road Traffic (Jersey) Law, 1956 (as amended) (exceeding the speed limit) and Article 16 (as amended) of the said Law (being unfit to drive through drink or drugs).

Advocate S.C. Nicolle for the Crown
Advocate P.C. Sinel for the appellant.

JUDGMENT

THE BAILIFF: This is an appeal by Denise Rushton against her conviction by Mr. Dorey on the 25th July, 1989, on two offences committed on the 2nd March, 1989. The first offence is that of driving at a speed greater than the speed limit, 60 m.p.h. in fact was the speed mentioned by the prosecuting officer,

and secondly driving whilst she was unfit to drive through drink and thereby committing an infraction of Article 16 of the Road Traffic (Jersey) Law, 1956 (as amended).

The case was tried in the fullest possible way and the appellant was ably represented by Mr. Sinel who appears for her this afternoon.

Every question that could conceivably be asked below was asked. Every point that could properly be taken was taken. Notwithstanding Mr. Sinel's efforts the learned Magistrate convicted. His reasons for conviction are set out at pages 192 and 193 of the transcript. There, the learned Magistrate, so far as Article 16 is concerned, applied his mind quite properly to the evidence as a whole, that is to say the police evidence as a whole because he had to balance that with the defence evidence. But also the inference which he was entitled to draw from the appellant's refusal to give specimens of blood and/or urine, in accordance with Article 16A of the Road Traffic (Jersey) Law.

So far as the speed limit is concerned clearly the only evidence was that of PC Fryer and his speedometer, and in the absence of any other matters the Magistrate had to ask himself whether PC Fryer was either mistaken, or misleading the Court, or telling an untruth, but there was no evidence that his speedometer was other than in proper working condition.

Mr. Sinel, in the course of today's appeal, has said there were a number of matters, nine in all, but I think he actually mentioned some more, I haven't actually added them up, which so far as the police evidence was concerned would make the conviction unsafe to uphold. The Court of course has on many occasions said that its duty in looking at an appeal on conviction from the Magistrate below is to examine the transcripts to see if there was evidence on which the Magistrate concerned could properly have come to the decision he did. If there was that evidence then even though the Court might not necessarily have come to the same decision, the Court does not lightly interfere with it. The Court has to be satisfied that there was unsufficient evidence for the Magistrate to have come to the decision he did, or that he drew the wrong conclusions and inferences from the evidence before him.

So far as the police evidence is concerned, it has been criticised in a number of ways by Mr. Sinel, but particularly the evidence of PC Fryer. He it was who saw Mrs. Rushton, as it turned out to be, driving her car in the early hours of the morning of the 2nd March along Victoria Avenue. There is some conflict of evidence as to exactly when he saw her and as to exactly what she was doing. But if the Magistrate was satisfied that PC Fryer was telling the truth, then he could, if he wished, properly convict on the evidence of PC Fryer supported by the reading of PC Fryer's speedometer.

Mr. Sinel has suggested that when his client eventually stopped her car, and it is said she stopped at a red light at the junction of Rouge Bouillon and Elizabeth Place (I think is the name of the street) where there were some other police cars, she was not forced to stop by the police cars but stopped merely because the light was red. In the same way, when she drove off at at the junction of Victoria Avenue and Pierson Road, where it meets on the south side of the traffic lights, she did so not because she feared that something was wrong, (she said she didn't even notice PC Fryer who as he said was standing there) but merely because the lights turned green.

The first conflict of evidence concerns what happened when she was stopped. PC Fryer was quite clear that when she got out she staggered. Neither Sergeant Adamson, a police officer of considerable experience, on whom for this purpose Mr. Sinel relies, but for other purposes does not, disagreed and likewise another police officer who was present also disagreed and did not notice her staggering. Be that as it may, there is abundant evidence from all the police that at that time and shortly afterwards three main defects, if I may call them that, were apparent in Mrs. Rushton's demeanour. First her breath smelt of drink; secondly her speech was slurred; and thirdly her gait was unsteady. It is not, I think, necessary for us to go through in detail exactly when these pieces of evidence were given, but they were in general supported by all the police. Of course they were opposed by the appellant herself, by a Mr. de Carteret who was a passenger in the car - but who was himself charged with an offence subsequently of being, I think it is, drunk and disorderly, or some offence against order in the police station - and by the evidence of Mr. Rushton and two ladies who were in the restaurant where it was admitted by the appellant she had been in the

company of Mr. de Carteret and another man at a small party, at which she said at one stage to the police she had drunk three or four glasses of wine, but later it was somewhat reduced.

The only safe way, of course, to find out how much anyone has had to drink - and let me say of course that our law does not have a limit, perhaps if it did life might be easier both for the police and for counsel, but it doesn't - the only safe way to find out the amount of alcohol in somebody is of course by examining their blood and urine and then one can ascertain whether that amount affected that particular person. Mr. Sinel has asked us to calculate by taking judicial note of the rate at which alcohol leaves the system that by the time, taking her word for it that she'd only had two glasses of wine, or maximum, three, or two glasses which corresponds, he said, to two pints of beer or the maximum of three, by the time she is said to have committed the offence her blood/alcohol would have been down to something like a figure of 15 or 13. It is impossible to lend credence to a calculation of that nature submitted to an appellate court in the absence of clear forensic evidence which was before the learned Magistrate. Therefore we cannot accept Mr. Sinel's invitation to indulge in that kind of assessment.

The real nub, however, of Mr. Sinel's approach today is that his client was in some way denied her rights as a person or citizen who was arrested by the police. It is said that that denial took the form of preventing her from contacting her husband or her lawyer and that had she been able to contact them in sufficient time, she might well have been advised by them to consent, because she did indeed refuse, that is not denied, to specimens being taken and Mr. Sinel urged that forensic examination would have shown incontrovertably that she had an insufficient amount of alcohol in her blood stream to allow the Magistrate to reach the conclusion that she was unfit to drive.

In passing let me say that so far as evidence of being unfit is concerned, it can be said that evidence of the manner of driving can be evidence as to the fitness of the driver, and if one accepts the evidence of PC Fryer, the car was in his words, meandering from side to side in the lane of Victoria Avenue when he was following it, and if that was accepted that of course could be supporting evidence as to the manner of driving and

therefore, as to the condition of the driver.

We cannot find that the police treated Mrs. Rushton other than in a reasonable way. It is quite clear, of course, that she was confused, she appears to have been, and it is quite clear and we accept that she is a woman of good character and was not used to being in police stations. But nevertheless she was on three occasions told about the effect that the refusal would have. The form was read out three times. It was explained to her at least once what it meant and probably twice, both by WDC de Gruchy and Sergeant Heron and certainly the Centenier; whether he told her three times or not, he certainly stressed that he had told her that it would be better if she had given a specimen and she couldn't complain the next morning if she didn't.

We have no doubt that confused or not, the appellant knew perfectly well what the effect of her refusal would be. She was indeed not denied access to other people; she was given a telephone book and allowed to make any number of telephone calls she liked and she did in fact telephone to Mr. Rushton who later came to the station. There is a complaint that neither Mr. Rushton, Mr. de Carteret, nor the man who was with him was allowed to see her. There is no rule which requires the police to allow people other than, perhaps, a lawyer to see a suspected person if to do so would prevent them completing their proper enquiries. Proper enquiries in the opinion of this Court includes asking a suspect whether he or she wishes to give a specimen and reading out the forms to that person. It is a customary way to do it; the Court has never yet had it suggested to them, it's a novel suggestion that before those forms are read out, someone should be able to see the person. It is not a requirement, although each case depends to some extent on the circumstances, but having regard to the time that she was at the police station; having regard to the fact that she had apparently time to have what appeared to be a friendly talk with WDC de Gruchy over knitting or at least the jumper she was wearing and some discussion over the problems of night duty in the police force, we cannot believe that the appellant did not know what the effect of her failing to give specimens would be. Her defence seems to have been she had done nothing wrong and therefore there was no need for her to give specimens. That was a view she took right through, but it is not a reason for saying thereby that there were

special circumstances which disentitled the Magistrate to consider the effect of her refusal.

In spite, therefore, of all you have done today, Mr. Sinel, for your client and we are satisfied that indeed you have done all you can, the appeal is dismissed, with costs.

n.b: no authorities cited.