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ROYAL COURT

28th August, 1991

119.

Before: The Bailiff, and
Jurats Gruchy and Le Ruez

The Attorney General

- v -

Nigel John Menard

Police Court Appeal: Appeal against conviction in respect of one charge of acting in contravention of Article 53 of the Motor Vehicles (Construction and Use) (Jersey) Order, 1956, (as amended) and one charge of acting in contravention of Article 48 of the same Order.

Advocate S.C.K. Pallot for the Crown;
Advocate F.J. Benest for the Appellant.

JUDGMENT

BAILIFF: The question which I have to decide which is a matter of law, is whether the word "permitting" carries with it some form of mens rea either actual or constructive, or whether there is


no distinction between "using" and "permitting to be used" in the two orders under which the appellant was charged before the Magistrate.

If the matter were open (but it is not for reasons I will give in a moment), I would be inclined to prefer the view of the minority judgment of Slade, J. in *James & Son, Ltd. -v- Smee; Green -v- Burnett and Another* (1954) 3 All ER p.273, but it is not open for me to do that unless I am satisfied that the decision of this Court in the case of *A.G. -v- Chambers* (1966) JJ 607 was wrong. In that case, which concerned a licensing matter, the Court considered the meaning of the word "permit". In fact it said that they took the words "permit", "suffer" and "allow" to be synonymous. However, on p.609 I find the following paragraph:

"The essence of this matter is that the act of permitting implies a state of mind; to permit something to be done one must have knowledge that it is being done or the circumstances must be such as to make it justifiable to impute knowledge".

Mr. Pallot for the Crown has very fairly conceded that if I were to find that circumstances should exist before the appellant could be convicted, he would not seek to argue that the circumstances were such that knowledge could be imputed to him.

Although I prefer the arguments of Slade J. in his dissenting judgment cited above, in view of the fact that in the *Chambers'* judgment a number of cases were considered by the learned Court, I have come to the conclusion that I cannot at this level rule that the offence of permitting is an absolute offence. I am aware that a strange result follows. It is this:



if an individual drives his own vehicle which is contrary to the Construction and Use Order, knowledge is irrelevant, it is an absolute offence, whereas if he lends it to somebody it would appear that he has either to have actual knowledge or shut his eyes to the condition. It seems to me a strange position and one that can only be remedied by the legislature.

Under the circumstances of this case I have little choice but to direct the Jurats, and they agree, that we should allow the appeal. It is therefore allowed with costs.

Authorities

Edwards: Mens Rea in Statutory Offences pp. 116-119.

A.G. -v- Chambers (1966) JJ 607.

James & Son, Ltd. -v- Smee.

Green -v- Burnett and Another (1954) 3 All ER p.273.