

JUVENILE COURT.

18th March, 1992.

43A.

Before: The Magistrate and
A.G. Le Maistre, Esq., and Mrs. R.A. Smith.

In the prosecution against

H.

1 count of illegal entry with intent to commit a crime.
(Count 1 on the charge sheet.)

PLEA:

Guilty

1 count of attempting to take and drive away a motor vehicle, without consent or lawful authority, in contravention of Article 28(1), as amended, of the Road Traffic (Jersey) Law, 1956. (Count 2.)

PLEA:

Not guilty.

REMARKS:

On the second count, Counsel for the accused argued (1) that voluntary desistance to a charge of attempt is a complete defence under French Law, and that in the absence of Jersey cases on the point, the Court should look to French Law as persuasive authority; and (2) that the acts of the accused were merely preparatory, and were not sufficiently proximate to amount to an attempt.

Advocate Mrs. N. Davies for the accused.

JUDGMENT.
(on the second count.)

The Magistrate: The case of Foster-v-A.G. (20th January, 1992) Jersey Unreported, C. of A., concerns the relationship of United Kingdom statutes and Jersey common law. The present case concerns not Jersey common law, but Jersey statutes. The relevant section of the Road Traffic (Jersey) Law, 1956, as amended, that is to say Article 28, is derived from (a) the United Kingdom Road Traffic Act 1930; and (b) the United Kingdom Criminal Attempts Act 1981, and it is therefore to English law that we must look for guidance.

There is also the fact that there is no trace whatsoever in Jersey law of the very interesting defence of voluntary desistance. We must conclude that this defence does not exist in Jersey law, and that the guiding principles of English law, or English-based law, should be regarded as having strong persuasive force.

As regards the second point in Counsel's argument, we are satisfied that what H. did on this occasion was more than merely preparatory. We regard Ruban-v-A.G. (1987-88) JLR 204; (10th August, 1987) Jersey Unreported, as good law and not superseded by Foster-v-A.G. We consider ourselves bound by what the learned Deputy Bailiff said in Ruban-v-A.G. on pages 4 and 5 of the Jersey Unreported text. There must be some overt act immediately connected with the proposed crime, and indicating an intention to commit that crime. The accused's sitting in the driving seat was, in Ruban, held to be such an overt act. In the present case, H. sat in the driver's seat, put his hands on the wheel and touched the ignition key. He admitted that he had an intention to drive, and it was with that intention that he got into the car. What he did before he had a change of heart was more than merely preparatory, and was sufficient to

constitute, under our law, the necessary overt act. I therefore find him guilty on Count 2.

AUTHORITIES.

Road Traffic (Jersey) Law, 1956, as amended: Article 28.

Road Traffic Act 1930.

Criminal Attempts Act 1981.

Foster-v-A.G. (20th January, 1992) Jersey Unreported. C. of A.

Ruban-v-A.G. (1987-88) JLR 204; (7th August, 1987) Jersey Unreported.

Romeril-v-Comptroller of Income Tax (1967) JJ 817.

Renouf-v-Att. Gen. (Jersey) [1936] A.C. 445; [1936]; 1 All ER 936.

Criminal Law Review, 1970: pp.521-2.