

**ROYAL COURT**  
**(Samedi Division)**

71A.

11th April, 1994

**Before:** The Bailiff, and Jurats Myles and Hamon

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**Police Court Appeal**

**Frank Paul Jean Pannetier**

-v-

**The Attorney General**

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**Appeal against a fine of £90 or 1 week's imprisonment in default of payment and an endorsement of driving licence imposed on the 25th January, 1994 in the Police Court, following a guilty plea to one charge of contravening Article 13 (A)(1)(aa) of the Road Traffic (Jersey) Law, 1956 (as amended).**

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**Advocate P.C. Harris for the Appellant.**  
**S.C.K. Pallot, Esq., Crown Advocate**

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**JUDGMENT**

**THE BAILIFF:** This is an appeal by Mr Pannetier against a fine of £90 and an endorsement of his licence imposed by the Relief Magistrate on the 25th January, 1994.

Mr. Pannetier should have come before the Court on 17th December, 1993, but for various reasons, which need not detain us today, he did not do so.

On the 11th January, 1994, the Assistant Magistrate announced a new policy in the Police Court, presumably agreed by all the Magistrates, that in future they would impose a scale in respect of speeding of £5 per mile above the speed limit; further, there would be what amounts to an obligatory endorsement of the licence. So far as the latter is concerned, it is perfectly clear to us that the Magistrates have a discretion as regards endorsement and they should not, by making statements such as were made by the Assistant Magistrate, fetter that discretion. One case may be

suitable for endorsement and another case might not be suitable and, therefore, where you have a discretion one should not fetter it in advance.

Accordingly, dealing first with the question of the endorsement, we consider that the discretion was not so exercised by the Assistant Magistrate and under the circumstances we are going to allow the appeal against the endorsement.

However, the question of the fine for speeding is quite another matter. The legislature has imposed a certain maximum fine for that offence and it was increased quite radically, according to Mr Pallot for the Crown, in 1990 from £100 to £500, although Mr Harris has suggested there were two stages, from £100 to £200, and from £200 to £500, but that does not matter because the fact is that at the time the offence was committed the maximum fine which could be imposed was £500. The purpose, it is quite clear, of increasing the fines was to discourage speeding in this small and over-crowded Island with the enormous number of vehicles on the road.

We consider that this appellant was extremely fortunate not to have been charged with something more than driving at a speed of 48 m.p.h. in a 30 m.p.h. speed limit area. However, we do not approach this case from the angle that he might have been charged but was not; we deal purely with the speeding question and the following argument raised by Mr Harris.

Now Mr Harris has raised an interesting argument: though the policy was announced on the 11th January, 1994, this offence took place in October, 1993, and the appellant should have been tried in December, accordingly the new policy (if, indeed it is a fettering policy of some nature) should not have been applied. He also drew our attention to the fact that whilst the Relief Magistrate imposed the policy shortly before or after the same hearing, the Assistant Magistrate did not.

There is much in what Mr Pallot has said that what this Court, as the appellate Court, and indeed the Magistrates themselves, have to look at is the intention of the legislature; and the case of Young -v- A.G. (1980) JJ 281 C of A., which was cited to us by the Crown is much in point. R -v- Penwith JJ. ex p. Hay, Pender and Perkes (1979) 1 Cr.App.(R) (S.) 265 cited by Mr. Harris is not really in point. It is quite clear that it is not necessary for notice to be given that the Law has been changed and the principle in that case does not apply in this one.

At the time the offence was committed the maximum fine was available to the Courts, if they wished to use it. Again we think it undesirable for the Courts to fetter themselves by laying down a scale of this sort because speeding in a built up area as this was, cannot be equated with going at the same speed on a clear

road, for example on Victoria Avenue, in daylight with absolutely no traffic or pedestrians in sight. Each case must be taken on its merits, consistently of course it is true, but we think that the Magistrates, with respect to their difficult task, should not seek to limit their discretion in the way that they appear to be doing by this announcement. We think that each case must be considered not only in relation to the intention of the legislature but also to its circumstances. I repeat: speeding or driving at 48 miles an hour in Don Road cannot be, or may not be, I put it no higher than that, as serious as driving in day light on Victoria Avenue, where there are no cars and no people.

We consider that the fine imposed was moderate in the circumstances. We do not think it was manifestly excessive or wrong in principle, accordingly the appeal against the fine is dismissed.

**Authorities**

Young -v- A.G. (1980) JJ 281 C of A.

R -v- Penwith JJ, ex p. Hay, Pender, and Perkes (1979) 1  
Cr.App.R.(S.) 265.