

Police Court Appeal17th December, 1985A.G. -v- George Arthur Lush

Deputy Bailiff: The appellant was convicted on the 21st June, 1985 of an infraction of Article 16 of the Road Traffic Law, 1956, and for violently resisting the police in the execution of their duty. These offences were said to have taken place in the early hours of the morning of the 28th January, 1985. He appeals on the grounds, first that the conviction was against the weight of the evidence; secondly, that the conviction was wrong in law, and thirdly, that the sentence was excessive in all the circumstances of the case. These grounds were prepared by his counsel, who was then acting for him at the time the appeal was lodged. Today the appellant presented his own case, and it largely depended on an attack on the evidence given by the prosecution witnesses before the learned Assistant Magistrate.

So far as charge 1 is concerned, that is to say, the offence of driving whilst being impaired, under Article 16 of the Road Traffic Law, 1956, the main evidence was that of Dr Holmes. The doctor's evidence was quite clear, and having examined him clinically, he found that he was unfit to be in charge of a motor vehicle.

That evidence was supported by the police evidence in a number of respects which it is not necessary for me to go into in great detail. The appellant, however, refused to give a sample of blood, although the effect of his refusal was clearly explained to him by the doctor at the time. He gave as his reason that previously he had had difficulties when he had been injected, or had a needle placed in his arm and therefore he did not wish the same unfortunate occurrence to happen again should he have occasion to have blood drawn from him by the police surgeon. He did not support his refusal before the learned Assistant Magistrate by any evidence other than his assertion, and an unsworn letter put in by his medical practitioner, Dr Ralph.

On the other hand, the Royal Court has clearly laid down the principles which govern the refusal of a suspected person to give samples of blood. The leading case - and it has not been appealed against, and is therefore an authority for us to consider - is that of Roger Albert Le Crom - v - The Constable of St. Brelade which is reported in 1975 Jersey Judgements at page 197. The Court examined there the English cases which they felt entitled to use to assist them in arriving at a decision whether under the circumstances the refusal was reasonable, and at page 202, referring to the decision in Harding which was indeed the case the learned Assistant Magistrate had before him, the Royal Court said this:-

"Also at page 157 Stephenson L.J. said this:-

'We wish to make it plain that our decision does not mean that other motorists can hope to avoid conviction of offences against this section, by the simple expedient of claiming that they were too frightened of the needle to give a specimen of blood, without any medical evidence as to their mental state. The law expects responsible adults to overcome their fears, whether rational or irrational, in order to comply with it.'

That is the position here, and the Magistrate was entitled, in our view, to have regard to the failure of the accused to provide blood - and there was some difficulty over the urine - and again he was entitled, should he so wish - and he obviously did - to have regard to the fact that in his opinion, those refusals were not reasonable.

As regards the appeal against charge 2, that is to say, violently resisting the police in the execution of their duty, we are satisfied that there was evidence on which the magistrate could properly convict. It was quite clear that there was a fracas in the early hours of the morning and if it is suggested, as it is by the appellant, that in fact, far from his resisting arrest,

he was violently attacked by the police, then the evidence is far from satisfying us that that was so. One has to remember that although it is the duty of the police to effect all arrests with as reasonable force as possible and no more, the hour of the day has to be considered. This was at two o'clock in the morning, and furthermore the accused himself had been drinking. There was no dispute about that evidence at all. Under all the circumstances we are not satisfied that the accused has shown that it would be unsafe to allow that conviction to stand and therefore, as in the case of the appeal against charge 1, the appeal against charge 2 fails.

We cannot find that the Magistrate erred in imposing a fine of that nature Mr Lush, you can see that it is in line with the fairly low fines which are currently being imposed. As regards the disqualification, it is mandatory, three years, unless there are special reasons about the offence itself, and we cannot see any special reasons about the offence. We dismiss the appeal against sentence.