

ROYAL COURT

56.

23rd April, 1990

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Bonn and Gruchy

Police Court Appeal: Gary Paul Edgeworth

Appeal against conviction on one
count of being drunk and disorderly

Advocate C.E. Whelan for the Crown,
Advocate F.J. Benest for the appellant.

JUDGMENT

COMMISSIONER HAMON: This was originally set down as an appeal against sentence by one of three co-accused. At the hearing before us this morning, Mr. Benest for the appellant withdrew his appeal against sentence and altered it to an appeal against conviction only.

The incident in which these three men were involved took place briefly at about 11 p.m. on Wednesday the 7th March, 1990, outside the night club known as Thackerays. The three came to the front door of Thackerays and one of their number, who was clearly the appellant, was wearing a tracksuit. This was against the rules of the night club. They had all been drinking in various degrees. They were refused entry. They became abusive and the door (which is made of specially laminated glass) was shut to prevent them entering.

It was anticipated by the doorman on duty that they would then go away. There were other customers queueing for entry.

While the door was shut, three other people approached. One of them was the manager of Lords night club. A heated discussion took place as the parties were not unknown one to the other. A fight developed. One of the three accused picked up a road lamp, which, perhaps fortunately, broke apart. However, in the mêlée the manager of Lords night club appears to have had his head pushed through the rear window of a motor car. He did not sustain injuries. The mêlée lasted but a short while and at the end of it, all three accused were subdued and arrested.

The accused, Douglas, was charged on three counts: 1) being drunk and disorderly for which he was fined £50 with an alternative of 12 days' imprisonment; 2) having in his possession an unlawful weapon - this charge was dismissed; and 3) violently resisting Police Officers in the due execution of their duty. On this charge he was fined £100 with an alternative of 25 days' imprisonment.

The accused Williamson was charged on two counts: 1) being drunk and disorderly for which he was fined £75 with an alternative of 18 days' imprisonment and 2) committing an assault on a named person. This charge was dismissed.

The appellant was charged only on one count, that of being drunk and disorderly. Although, Douglas, during the course of the trial, admitted to drinking seven pints of beer and Williamson five or six pints of beer, there is no evidence that the appellant consumed any more than two pints of beer.

The Magistrate, Mr. Short, clearly regarded the appellant as the ringleader. He said: "Unfortunately the trouble started with you and it has various aggravating factors". That may well be so.

It is also apparent that the appellant has an appalling record. Only one month previously (almost to the day) he had been fined £40 in the Magistrates' Court for being drunk on licensed premises. One

month earlier (again almost to the day) he had been fined £50 for acting in a manner likely to cause a breach of the peace.

He was banned from the Red Lamp and from Lords. He is now of course banned from Thackerays.

The Magistrate made his views very clear to the appellant at his bail application. He said this: "There is only one charge against you but you are always in Court and for that reason I hesitate to give you bail, but I will do so on this occasion in the sum of £50. Mark this, Edgeworth, the Court is tired of seeing you and you may expect to catch it if you are found guilty!". Again all that may be true.

The only definitions given to us arising from this charge and we must remind ourselves that the offence in Jersey is a common law and not a statutory offence, were two passages, one from a work called "Offences against Public Order" by A.T.H. Smith which refers to the Licensing Act 1872 of England, section 12 of which reads: "Any person who in any public place is guilty of drunk and disorderly behaviour may be arrested without warrant by any person and shall be liable on summary conviction to a fine not exceeding level three". And the definitions then go on in this way: "Whether or not a person is "drunk" is a question of fact and degree. Although the Shorter Oxford Dictionary says that if the person has drunk "intoxicating liquor to an extent which effects steady self control" it is arguable that the person must have taken intoxicating liquor to excess so that he has lost the power of self-control. It has been held that the term relates to being under the influence of intoxicating liquor, and the offence is not capable of commission where the intoxication is induced by a substance other than alcohol, such as solvent.

Disorderly conduct bears the same significance as it does in the section 5 offence (again, that is a section of the English statute) and is likely to involve conduct such as shouting or singing in such a way as to alarm persons nearby, uncertainty of gait, staggering, lurching or swaying, and behaviour that causes people to take evasive action. For the Constable, the advantage of this section is that it confers an immediate power of arrest. An advantage, from the policeman's

perspective, is that the offence must take place in a public as opposed to a private place".

The only other authority cited to us by Mr. Benest is the case of Crown -v- Herbert Presdee (1927) 20 CAR 95. The facts of the case need not concern this Court, but the accused there was charged with being drunk while in charge of a motor car. The Lord Chief Justice said: "No ingenuity or argument can get rid of the plain words "he was not drunk". That is - not guilty. When the jury returned to say that they were divided, the Chairman gave them his view. Whether the word "drunk" in the Act ought to be defined at all, and as the Chairman defined it, may well be worthy of consideration. In the earlier judgment of Greer J., the Court of Appeal in the same case had said "drunk is what an ordinary reasonable person would consider such".

In the course of his address, Mr. Whelan urged upon us that that the matter was a question of fact and degree only. The fact that the appellant had drunk two pints of beer was sufficient, if he was disorderly, to lead to the conclusion that his conduct was effected by the drink, however little he had consumed.

The evidence, and we saw it this morning, was that he had uttered threats, had lunged at Mr. Young, had been walking amongst the traffic and had lost his self-control.

There is no doubt in our mind that the behaviour and the admitted amount of alcohol consumed by Douglas and Williamson fully justified the charge against them of being drunk and disorderly. Now, because this is the first time this has come before this Court it will be necessary for us to refer in this judgment to the passages that were cited to us from the transcript. They are the only passages that really help us in assessing whether or not the learned Magistrate erred in reaching his conclusions.

At p.7 Mr. Paul Chatterley, a doorman at Thackerays, said this: "I was on the front door with another doorman when the three gentlemen came to the front door. Unfortunately one of them was

wearing a tracksuit and it is the Club rules that we do not permit a tracksuit or anybody coming up in training gear in the Club. Shean and myself asked them we said: "We're sorry but we can't let you in due to the fact you are in tracksuit" and also another of them had had a little bit too much to drink and we thought it was better for the Club if he didn't come in".

Mr. Benest placed great reliance on that passage because it is quite clearly the appellant who was wearing a tracksuit and the other men could not possibly have been the appellant who in the opinion of this experienced doorman had had too much to drink.

We turn then to p.12 of the transcript. Mr. Chatterley again says this, and here he is being questioned by the appellant (and all the appellants although offered legal aid chose to defend themselves). The appellant says: "Sir, I'd ask (indistinct) just trackies and trainers in"? (sic) The witness, Mr. Chatterley, replies: "Because the Club rules are that there is no tracksuits or training shoes allowed on a Wednesday, Friday or Saturday. The appellant: "Yes, but that's the reason that we got refused isn't it?" Witness: "Pardon?" Appellant: "That's the reason we got refused?" Witness: "That's the reason you got refused, yes". There is then an indistinct question and the witness says: "Yes, and you were also refused because you were making you had a little bit too much to drink". And the appellant then appears to make some form of answer which is not decipherable.

Again at p.14 Mr. Thomas Hoatson the head doorman, says this: "And I noticed there was a bit of a problem at the door so I went across and that three men were getting turned away because of their dress problem. Because in the Club there is a dress code, you can't wear training shoes or tracksuits. You can wear jeans but you've got to be smart. So the three walked through the door and were refused entry, because of the dress code, plus they were suspected of being a bit intoxicated".

And again at p.22 Mr. Gary Bonner, the manager of Thackerays, (although his evidence here is clearly hearsay) says this: "When I

arrived there I saw that nobody was coming in even though there was a queue outside, so I asked one of my doormen what was going on and the doorman informed me that three gentlemen at the front of the queue, one of them was unsuitably dressed and in his opinion another one of them was drunk so he's decided to refuse entry to all three of them". That, of course, supports the evidence of Mr. Chatterley.

At p.25 Mr. Bonner says: "When the police were actually controlling the situation the two gentlemen involved they were shouting rather loudly and they were swearing and they weren't in any hurry to get in the back of the police van". Those two gentlemen, of course, are the two co-accused and not the appellant.

And then finally at p.39, P.C. Barnes (and we place great reliance upon what the Police Constable says; he is an experienced police officer who has great experience of these unfortunate incidents which appear to occur all too regularly in the town of St. Helier): "After that I saw Mr. Hoatson bring Edgeworth" (that's the appellant) "back up the street to Gloucester Street accompanied by a P.C., he wasn't particularly resisting or anything like that but he was shouting abuse. All three males were placed in the police van and conveyed back to the Police Station. Whilst being detained it was apparent that all three had been drinking, they weren't particularly intoxicated but I think they'd had enough to effect their behaviour. And that concludes my evidence, Sir".

It is perhaps unfortunate that although the Magistrate addressed both Williamson and Douglas on the question of how much they had had to drink and in our view satisfied himself that they had in fact been drinking to excess, he does not seem to have taken the same approach with the appellant. Perhaps - and we can only suppose - he felt that he knew him well. That in our view was unfortunate and on the evidence that we have heard and on the submissions made to us by Mr. Benest, we cannot on the evidence see that the accused was drunk. We feel strongly that both elements of the charge must be proved, particularly as there were many other offences with which the accused could have been charged and upon which he would

undoubtedly have been found guilty had the matter been dealt with properly.

We cannot say that beyond reasonable doubt the Magistrate exercised his discretion correctly in finding the charge proved against the appellant. Therefore, under the circumstances, we must allow the conviction to fall.

Authorities referred to:

Offences against public order by A.T.H. Smith at p.p. 127, 128.

Crown -v- Herbert Presdee (1927) 20 CAR 95.