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ROYAL COURT

15th October, 1990

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

Police Court Appeal: Markus Anthony Costa

Appeal against conviction on a charge
of causing or permitting another to use
a motor vehicle whilst uninsured against
third-party risks.

Advocate S.C.K. Pallot for the Crown.
Advocate J. Gollop for the appellant.

JUDGMENT

COMMISSIONER HAMON: As a preliminary point the first part of this appeal was an application to hear the appeal out of time and because of the reasons given to us and the fact that the appeal was filed just one day late, we immediately allowed that point and moved on to the more important matter which has caused us some concern.

At approximately a quarter to two in the morning of Friday, 25th May, a police mobile patrol met a vehicle exiting from a junction across the Route du Fort against a 'no entry' sign. From the police evidence the vehicle was travelling at an excessive speed and did not stop at the yellow line before crossing the Route du Fort.

The occupant was apprehended by the police constable involved and it was ascertained that the driver did not have a driving licence or insurance to drive the car.

The registered keeper of the vehicle was shown to be the appellant and his address as given was in fact not the address where he was presently residing.

The driver of the vehicle was later appropriately dealt with at the police court, but at a quarter to four in the morning of that same day, the appellant was approached by the two police officers. It is not perhaps the best time of the morning in which to carry out an investigation and it is clear that the appellant had been drinking heavily.

During the course of their investigation the police officers spoke with the driver of the vehicle and this question and answer series occurred:

Q: Tonight you were stopped driving J34651 a white Volks Wagen Golf?

A: Yes.

Q: Do you have a driving licence?

A: No.

Q: Do you have insurance to drive it?

A: No.

Q: Do you have permission from the owner to use it?

A: No.

Now that firm negative statement from someone who had been drinking but was not under the influence of drink unfortunately was not given to the learned Magistrate at any time and does not form part of the police report that was before him.

What was before the learned Magistrate in the police report was the fact that the appellant appears to have admitted that he had given the driver permission to use the vehicle as and when he liked. And

that statement was repeated by the police constable when he gave his evidence in the police court in these words:

"I then asked Costa if he had given permission for Egan to use his vehicle to which he replied: "as and when he likes" that he could use the vehicle "as and when he likes"." And the learned Magistrate replied that he had given him a general permission. And the witness went on to say: "to use whenever he likes"."

Now it must be said that at the end of the police constable's evidence the learned Magistrate said this to the appellant: "Mr. Costa stand up, please. Do you want to ask the officer any questions? You will be able to say what you want to say to me later on, but do you want to ask about the evidence"? And although the transcript reports the reply as indistinct, it is quite clear that the appellant, at that point, said "no".

The learned Crown Advocate has very fairly put the facts before us and says that on that basis alone the appellant was given ample opportunity to be heard and did not contradict the statement which as we say was taken from him in unusual circumstances in the very early hours of the morning.

What he did say when he gave his evidence is this, and the whole statement appears to us to be confused. He says:

"We went for a couple of drinks and I ended up getting drunk and just walking home and forgetting my keys on the table and I (indistinct) best not to leave my car in the car parks I would get a ticket or whatever - and drove it home for me. Then I got and police coming to my door and they said to me did I give him permission, but how can he steal a car from me, he's my friend? I said to them I don't want any charges to be placed or anything but I'll come down to the station. I mean it doesn't really make sense, I was in the pub and I left my keys on the table (indistinct). I didn't even know he'd taken my car I just went home".

Now that to us implies, if nothing else, that the appellant was confused in the evidence that he was giving and perhaps not certain of the charge that he had to answer, because Article 2 of the Motor Traffic Third Party Insurance (Jersey) Law, 1948, under which he was convicted says that "subject to the provisions of this law it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person as the case may be, such a policy of insurance in respect of third party risks as complies with the requirements of this law".

We have heard before us today a very wide range of cases taken from the English statutes and in particular one case given to us by Mr. Gollop very properly and fairly as this is an appeal is the case of Baugh -v- Krago (1975) Road Traffic Reports 453 which seems to imply that the rule in England is that honest and genuine belief that a vehicle was insured is no defence. It is only a defence if the owner of the vehicle made it a prior condition of permission that the driver was the holder of the licence.

There have been, according to both counsel, who have clearly sieved the cases very finely, no reported cases in Jersey on this important point and the point of law appears to us to be whether 'mens rea' is required in an offence of this nature, or whether it is, under the Jersey statute, an offence of strict liability.

We do not criticise the learned Magistrate but we do feel that he might perhaps have dealt more fully with the appellant had he known of the conflicting statement previously made by Mr. Egan the driver of the vehicle which statement was not before him.

We do not wish in any way to criticise the learned Magistrate further than that, but there are certain factors in this case, despite the very fair and reasoned arguments given to us by the learned Crown Advocate that do disturb us. We do not wish to get involved in what our thoughts might be on the points of law, but we feel they are important enough that we are not going to let the matter rest as it stands.

Mr. Gollop gave us the opportunity to hear the driver of the vehicle today so that we could make a final decision here but we decline to do that. We have the power to do so but we do not feel it appropriate in the circumstances that we should do so.

Our decision under the wide powers given to us under the Police Court Appeals Law is that we are going to remit the matter back to the learned Magistrate, or to an alternative Magistrate as the case may be, where the case can be heard again and where proper emphasis can be put on the question of law. And also, because the opportunity was not presented to the learned Magistrate, either that the police report includes the statement of Mr. Egan, or if it is thought appropriate, Mr. Egan himself can give evidence in the Court below.

In the circumstances I think what we must do and I will hear both counsel as to whether this is the right course of action, is not to quash the conviction but to suspend the conviction in some way - put it in limbo - pending a decision on the re-trial. But I am open to suggestions from counsel as to how we should deal with that. You will have your legal aid costs, Mr. Gollop.

Authorities referred to:-

A.G. -v- Fossey (1982) J.J. 223.

A.G. -v- Gibaut (28th January, 1985) Jersey Unreported.

A.G. -v- Aubin (7th February, 1985) (Court of Appeal) Jersey Unreported.

Police Court Appeal: Mark Dawson (5th March, 1990) Jersey Unreported.

Police Court Appeal: Denize Rushton (16th October, 1989) Jersey Unreported.

Archbold (43rd Ed'n.) Vol. 1, at p.p. 413-415.

A.G. -v- Gorvel (1973) J.J. 2503.

A.G. -v- Barnes (17th December, 1988) Jersey Unreported.

Wilkinson's Road Traffic Offences (14th Ed'n.) Vol. 1, at p.p. 1/57 to
1/75 and 1/560 to 1/561.