

ROYAL COURT

180

19th November, 1990

Before: The Bailiff, and
Jurats Bonn and Hamon

Attorney General

- v -

Anthony Philip Sanguy

Police Court Appeal.

Appeal against conviction for offence
under Article 16A(1)(a) of the
Road Traffic (Jersey) Law, 1956.

S.C.K. Pallot, Esq., Crown Advocate.
Advocate A.P. Begg for the appellant.

JUDGMENT

BAILIFF: This appeal arises out of an incident which was reported to the Police regarding premises near Sandybrook Hospital which had been broken into. The Police went to the scene and found four persons, one of whom was the appellant, sitting on a wall. There were two motorcycles nearby, one of which belonged to the appellant. He was found by one of the police to be under the influence of drink. He was therefore breathalysed and taken to the Police Station. It was found however there that the breathalyser was not working. He consented to a medical examination, as a result of which he was found to have a higher

level of alcohol in his blood than the statutory limit. He was therefore charged under Article 16A(1)(a), that is to say driving or attempting to drive a motor vehicle on a road or other public place, that is to say in Sandybrook Lane.

There was some dispute about the evidence and after it had been heard, the Magistrate found that he was satisfied that the appellant had been driving the motorcycle in the sense that he had been sitting in the saddle and steering it in the ordinarily accepted way of riding or driving a vehicle; and he then went on to find that the article - he said "the following articles" - could also be taken to mean "has driven".

When the matter came before the Court this morning, the Court indicated (after reading the papers from Mr. Begg for the appellant) that so far as the first matter of proof was concerned they were satisfied that there was abundant evidence on which the Magistrate could find that the appellant was driving and therefore so far as the physical act of driving was concerned they were not prepared to hear any further argument unless there were very strong facts which Mr. Begg wished to urge upon them.

Accordingly the matter was argued on the basis that the Magistrate was wrong to say that "drives" in Article 16A(1)(a) included the past tense as well as the present.

If one looks at what was actually said by the Magistrate in relation to the last point one finds that what he actually said was this: "Finally I am satisfied that as regards the Law, the word "drives" in Article 16(a) in the light of the revisions of the following Articles is to be interpreted in the wider sense of including "has driven"."

Now the following articles and a number of other Articles relate to new statutory offences. Article 16(b) relates to the powers of a police constable to what is normally called in common parlance "breathalyse" a person whom he has cause to believe is, or has been, doing something which entitles him to request him to be breathalysed.

And there is a distinction there between the past and the present which is not apparent in Article 16(a) nor is it apparent in the preceding Articles of 14 and 15 which concern respectively dangerous or reckless driving and careless driving.

The Magistrate used the following Articles as an example. He would have been better advised to have used the two earlier Articles. Mr. Begg has suggested that this is a penal statute as indeed it is, and that whilst his client might have been charged with being in charge of the vehicle, he could not be charged with driving it because by the time the police arrived at Sandybrook the action of driving as defined or at any rate considered in the case of Edkins -v- Knowles [1973] QB 748 had ceased inasmuch as the four of them had been sitting on the wall for some five or ten minutes.

There is some attraction in that argument but we must look at Edkins -v- Knowles to see what exactly that case was about. It concerned the right of a policeman to form a suspicion of a motorist's actions whilst he was still driving; if the wheels had come to rest and for some time afterwards the driver was not in fact doing anything which could be connected with the driving, that was not sufficient for the police officer concerned to form a proper legally tenable suspicion. It is a case limited to our equivalent article, Article 16(b). It cannot be related to the requirements of Article 16(a). If one takes Articles 14, 15 and 16 together it is quite clear that the present must, of necessity, include what has happened in the immediate past. It is as Mr. Pallot has said a matter of proof in each case. It would be impossible otherwise; the statute would be a nullity. The States have decided that it is an offence to do certain things, but it is a question of proof as to whether those certain things have been done or not.

Therefore, Mr. Begg, perhaps it was the wording of the Magistrate's judgment which led me to ask you to submit this point. It was an interesting point, nevertheless, we find the appeal must fail on that point.

We have also considered whether your client should pay for the medical expenses of being medically examined because the breathalyser had broken down. We do not think he should and although the appeal has failed, we can vary anything we wish and we do not think it just that he should pay for that. Mr. Begg, you shall have your legal aid costs.

Authorities

Road Traffic (Jersey) Law, 1956, -

- (a) Article 16(A);
- (b) Article 1 - Definition of "Driver";
- (c) Articles 14 and 15.

Road Traffic Act 1988 - Section 5

(Extract from Wilkinson's Road Traffic Offences, 14th Ed'n, 1989, Vol. 2 p.2/129).

Wilkinson's Road Traffic Offences (14th Ed'n. 1989),
Vol. 1 pp. 1/33-1/44.

Edkins -v- Knowles [1973] QB 748.

A.G. -v- Clark (1987-88 JLR) 448.

Archbold (42 Ed'n, 1985), pp. 1125-1126.

P. Murphy "A Practical Approach to Evidence" pp. 191-226.

Cassell's English Dictionary (4th Ed'n, 1968), -

- (a) Definition of "Drive"
- (b) Definition of "Ride".