

ROYAL COURT

9th December, 1991

186.

Before: The Deputy Bailiff assisted by
Jurats Gruchy and Vibert.

POLICE COURT APPEAL

Attorney General

- v -

Joseph Michael McMahon

Case stated. The Magistrate having declined to award costs of a "Voir dire" to the Appellant, following which he was acquitted on charges of driving uninsured, driving without a Licence, and taking and driving away a motor vehicle without the consent of the owner.

Advocate S.C.K. Pallot of behalf of the Attorney General.

Advocate P.M.. Livingstone for the Appellant.

DEPUTY BAILIFF: The Appellant was presented before the Police Court on the 30th August, 1991, on a single holding charge of having on the 29th August, 1991, taken and driven away a motor vehicle without having either the consent of the owner or other lawful authority. He was remanded in custody. ..

On the 18th September, 1991, the single charge was replaced by a new Charge Sheet which charged the appellant with six counts of taking a motor vehicle without the owner's consent contrary to Article 28 (as amended) of the Road Traffic (Jersey) Law, 1956, six counts of driving without a licence contrary to Article 3 of the Law, six counts of using a motor vehicle uninsured against third party risks, contrary to Article 2 (as amended) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, one count of driving a motor vehicle without due care and attention, contrary to Article 15 (as amended) of the Law, one count of failing to stop and inform a Police Officer of the occurrence of an accident, contrary to Article 27 (as amended) of the Law, and one count of driving with alcohol above the prescribed limit, contrary to Article 16A(1) of the Law.

The appellant pleaded guilty to Counts 6 (taking a motor vehicle without the owner's consent); 12 (driving without a licence); 18 (using a motor vehicle uninsured) and 21 (driving with alcohol above the prescribed limit). He reserved his plea to all other charges and, on the 2nd October, 1991, he pleaded not guilty to all those other charges. His Counsel made a submission that the appellant's statement was improperly obtained and should be ruled inadmissible.

The matter proceeded on a "voir dire" with Police Constable Langlois and the appellant being heard. He was then remanded in custody to the 7th October, 1991, when Police Constable Bisson and the Centenier were heard.

The "voir dire" concerned material in the second part of a question and answer interview with Police Constable Langlois, in which the appellant made admissions tending to substantiate his guilt. The appellant submitted, through his Counsel, that the

admissions had been improperly obtained by the Police. There was virtually no other evidence to support the prosecution on the denied offences.

The record of interview on the 29th August, 1991, could be divided in two parts. Part 1 consisted of pages 1 to 4 inclusive and was not objected to. Part 2, pages 5 and 6, was objected to. Between the two parts there had been a gap, recorded as being from 18.17 to 19.08 hours.

The evidence heard was on what occurred during the gap in the interview and thus on the admissibility of the second half of the statement.

The Relief Magistrate decided that in all the circumstances of the case it would be unsafe to accept the second part of the interview question and answer, and in the exercise of his general discretion to exclude evidence which may have been unfairly obtained, he did so. Thereupon the appellant was acquitted on the remaining charges.

The appellant was sentenced on each of Counts 6, 18 and 21 to four weeks imprisonment all concurrent with each other. He was also disqualified for holding or obtaining a licence to drive a motor vehicle for two years. On Count 12 he was fined £20.00 or in default of payment ordered to serve four days imprisonment. The learned Relief Magistrate refused to award costs to the appellant, notwithstanding that all charges to which the appellant had pleaded not guilty had been dismissed.

The appellant now appeals, by means of case stated, only against the Relief Magistrate's decision to refuse the application for costs.

This Court is not concerned with the quality of the learned Relief Magistrate's decision to exclude, as inadmissible by reason of inducement, the second limb of the question and answer interview. Clearly, the appellant has no quarrel with that decision. Therefore, it is not necessary for us to review the transcript of the "voir dire" in detail. It is only the decision as to costs which we are required to consider. The Attorney General -v- Bouchard (6th April 1983) Jersey Unreported, applies.

However as the Court said in the appeal of Douglas (5th February 1990) Jersey Unreported, and I quote **"the exceptions are by no means closed and there are a number of other reasons, apart from those cited in Archbold"**.

In pursuance of that proposition we agree with Mr Pallot's submission that we should add item (d) of the Court of Appeal Criminal Division Practice note (1982) 3 All ER 1152 - and I quote it: **"d. Where the defendant is acquitted on one charge but convicted on another the Court should make whatever order seems just having regard to the relative importance of the two charges and the conduct of the parties generally"**.

In our judgment the learned Relief Magistrate was fully justified in his decision. Because he has an unfettered discretion we cannot interfere unless we conclude that the Magistrate wrongly exercised his discretion in law or without reason. It is not enough that we might have come to a different conclusion. However that does not matter in this case because we believe that the magistrate came to the right decision.

The Court agrees with Mr Pallot that the appellant's own conduct bought suspicion on himself and misled the prosecution

into thinking that the case against him was stronger than it was.

The Court agrees with the Magistrate that with the confession there was ample evidence to support a conviction and that the appellant was acquitted on a technicality which had no merit that is to say that a true confession was excluded on technical grounds that there may have been an inducement.

And even if the Court were wrong on either or both those grounds the Court applies the additional consideration contained in the Practice Note: ***"Where the defendant is acquitted on one charge but convicted on another the Court should make whatever order seems just"***.

The Court has no doubt where the justice of the matter lies. the Magistrate's decision should be upheld.

Accordingly the appeal is dismissed.

AUTHORITIES

A.G.-v-Bouchard (6th April, 1983) Jersey Unreported

A.G.-v-Douglas (5th February, 1990) Jersey Unreported.

Ibrahim-v-The King (1914) A.C. 599.

Court of Appeal (Criminal Division) Practice Note. (1982) 3 All ER
1152