

ROYAL COURT
(Samedi Division)

18th May, 1992

86.

Before: The Bailiff, assisted by
Jurats Hamon and Herbert

Anthony Richard Bish

-v-

Her Majesty's Attorney General

Police Court Appeal. Application for leave to appeal against conviction (following a guilty plea in the Court below) and appeal against sentence of £25 fine or 3 days imprisonment in default on one charge of contravening Article 15(1) of the Road Traffic (Jersey) Law, 1956, as amended, and a sentence of £75 fine or 1 weeks' imprisonment in default (consecutive) with 6 months' disqualification on one charge of contravening Article 27/1A of the said Law.

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

Advocate S.R.G. Howard for the appellant.

JUDGMENT

THE BAILIFF: The appellant, Anthony Richard Bish, was convicted before the Police Court Magistrate on the 17th March this year of two offences under the Road Traffic (Jersey) Law, (1956). The first was a contravention of Article 15, and the second a contravention of Article 27 (1A).

To each of those charges the appellant, through his advocate, pleaded guilty. The facts maybe briefly stated. Sometime during the evening - at any rate after 10 o'clock - of the 11th February, the appellant was driving his car up Mont Cochon where he lost control and eventually, after striking a tree, drove the vehicle over a bank and into a field. He left it there, after having placed pieces of wood under the wheels in order to try to free it, but did not contact the police. It was found there on the next morning at 6.05. Subsequently after the accused had gone to the site and found that his car had gone, he presented himself to Police Headquarters.

In the course of the trial counsel was at pains to stress to the learned Magistrate that his client had not been attempting to avoid his civil or criminal liabilities in respect of Article 16 of the Road Traffic Law, that is to say driving whilst under the influence of drink.

Article 27 is very clear. What it says is this:

"Where owing to the presence of a vehicle on a road an accident occurs whereby damage or injury is caused to any person, vehicle, animal or property, real or personal, the driver of the vehicle shall stop and-

(a) (i) if damage is caused to any unattended vehicle, or to any other property belonging to a person other than a person involved in the accident; or

(ii) if only one vehicle is involved in the accident and the only damage caused is to that vehicle; or

(iii) if injury is caused to any person or animal;

shall immediately inform a police officer of the occurrence of the accident and shall not move the vehicle without the consent of a police officer."

The position before the Magistrate was that damage was caused only to the vehicle involved in the accident; under

paragraph 1(a)(ii), therefore, the appellant had a duty to report to the police. He failed to do so and when charged, as I have said, pleaded unequivocally guilty.

After a submission to the Magistrate that the appellant's failure to report the accident was not because he wanted to avoid a possible charge under Article 16, the Magistrate said in sentencing the appellant on count 2 (that is the count relating to Article 27):

"You will be fined £75 or one week. I am satisfied that your failure to report to the police was not for the purpose of avoiding a possible conviction under Article 16. Nevertheless when there is an accident, especially at night, that accident must be reported without delay and so you will be disqualified for 6 months".

I think the learned Magistrate meant where such an accident falls within the provisions of Article 27, otherwise the fact that it happened at night would be irrelevant and he disqualified the appellant for six months as well as fining him.

Mr. Howard, in a persuasive address, has invited this Court not to look behind the statute, which the Court never does if the statute is clear, but to look behind the plea. Article 14 of the Police Court Miscellaneous Provisions (Jersey) Law 1949, sets out the rights of an appellant and it is as follows:

**"Article 14.
Right of Appeal**

(1) A person convicted by the Police Court may appeal to the Royal Court-

(a) if he pleaded guilty or admitted the facts, against sentence;

(b) if he did not, against the conviction or sentence."

In this case clearly a guilty plea was entered and therefore *prima facie* this Court has no jurisdiction to

entertain an appeal. However, a number of Jersey cases in the Poursuites Criminelles of some years ago indicate that the Court is prepared to entertain an appeal where there are particular grounds to enable it to do so. The one case which supports that suggestion is the case of Mortell, (1963) 36 P.C. 163, where although the appellant had pleaded guilty, a witness came forward afterwards to show that she had been drunk at the time and therefore didn't have the necessary *mens rea*. And, therefore the Court was prepared to look behind her guilty plea. On the other hand the Court was not prepared to do so in three other cases, Barrot, (1965) 36 P.C. 468, Aubin, (1966) 37 P.C. 98, and Luce, (1969) 38 P.C. 121.

The conclusion which we draw from these cases is that the Court will look at any case to see if it has jurisdiction where either the accused did not appreciate the nature of the offence or there were any other grounds entitling the Court to do so. It is not necessary for us to consider the approach in the Court of Appeal because the statute in that case is different.

For the Crown, Mr. Pallot has suggested that the learned Magistrate was not, as Mr. Howard suggested, finding that the proviso to Article 27 was proved. The proviso is in the following terms:

"Provided that a person shall not be convicted of an offence under this article if he proves to the satisfaction of the court that his failure to comply with the provisions thereof was not with the intent of avoiding any civil or criminal liability arising out of the accident."

The Magistrate did not say in the extract that I have read that the appellant had not intended to avoid any civil or criminal liability, indeed he could not say so, because the appellant himself had pleaded unequivocally guilty to Article 15 and therefore it could be argued, and the Magistrate did not need to spell it out, that the appellant did have the intent to avoid his liability under Article 15. We are not prepared to

Extend it, as Mr. Howard has invited us to do, beyond the ordinary meaning of the words the Magistrate used.

In reality a guilty plea was entered, quite properly in our view; later on, in the course of the trial, that plea was not changed but stress was laid on the question of Article 16 and that Article only was involved. To suggest, therefore, that the Magistrate found the proviso proved is, we think, straining the law and indeed straining the facts. Accordingly on the preliminary point we find that we are not prepared to accept your submission, Mr. Howard, although very well put, that we should discharge the conviction or return the matter to the Court. We allow the conviction to stand. So, we now have to deal with the length of disqualification.

The period of disqualification will be one of three months.

Authorities

Application for leave to appeal against
Conviction

Police Court (Miscellaneous Provisions) (Jersey) Law, 1949:
Article 14.

Court of Appeal (Jersey) Law, 1961: Article 24.

A.G. -v- Foster (23rd January, 1990) Jersey Unreported, C. of A.

4 Halsbury 11(2): para 977: Plea of Guilty: p.p. 823-4.

Archbold (1992 Ed'n) (Vol.1): 2-76,77: p. 218.
2-103-8: p.p. 232-5.

A.G. -v- Mortell, wife of Cremin (1963) 36 P.C. 163-5.

Barrot (1965) 36 P.C. 468.

Aubin (1966) 37 P.C. 98.

Luce (1969) 38 P.C. 121.

Appeal against Sentence

Short -v- Att. Gen. (1985-86) JLR. N.19.

Trédant -v- A.G. (12th March, 1990) Jersey Unreported.

Torrell -v- A.G. (11th February, 1991) Jersey Unreported.

Miller -v- A.G. (4th June, 1990) Jersey Unreported.

Kane -v- A.G. (1965) J.J. 501.

Mercier -v- Att. Gen. (1989) JLR. N.7.

Boyd & Allen: Sentencing Law and Practice: p.p. 194-5.

Thomas "Principles of Sentencing" (2nd Ed'n): Disqualification
from driving: p.p. 348-54