

ROYAL COURT
(Samedi Division) 207,

10th October, 1994

Before: The Deputy Bailiff and Jurats
Coutanche and Le Ruez

Police Court Appeal
(The Magistrate)

Seamus Joseph Ryan

-v-

The Attorney General

Appeal against a total sentence of 4 months' imprisonment, passed on 13th July, 1994 following
guilty pleas to:

- 1 count of taking and driving away a motor vehicle, without the owner's consent or other lawful authority, contrary to Article 28(1), as amended, of the Road Traffic (Jersey) Law, 1949 (count 1 of the charge sheet) on which charge the Appellant was sentenced to 4 months' imprisonment.
- 1 count of driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, contrary to Article 16A(1) of the said Law, on which charge the Appellant was sentenced to 1 week's imprisonment, concurrent, with 12 months' disqualification from driving.
- 1 count of driving a motor vehicle without a licence, contrary to Article 3 of the said Law, (charge 3) on which charge the Appellant was sentenced to a fine of £200 or 7 days imprisonment, concurrent, in default of payment; and
- 1 count of using a motor vehicle whilst there was not in force a policy of insurance in respect of Third Party Risks, contrary to Article 2, as amended, of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, (charge 4), on which charge the Appellant was sentenced to 4 months' imprisonment, concurrent.

Appeal allowed; sentences quashed; 1 year's Probation Order with 100 hours Community Service substituted.

Advocate C.J. Scholefield for the Appellant
J.G.P. Wheeler, Esq., Crown Advocate

JUDGMENT

5 THE DEPUTY BAILIFF: Seamus Joseph Ryan appeals against the sentences imposed by the Police Court on 13th July, 1994, when he was sentenced to a total of 4 months' imprisonment for offences of taking and driving away a motor vehicle, driving whilst unfit, driving without a licence and driving without third party insurance.

10 The offences occurred on 25th May when, during the afternoon, the appellant left a public house where he had been drinking and went with friends to an area near Ordinance Yard. He noticed a parked car with its engine running and, with the encouragement of his friends apparently, the appellant made his way towards the car and climbed into it. He reversed it for some twenty yards
15 intending, as he said, as a jest to move it round the corner out of sight of the owner. Before he could complete this manoeuvre the owner of the car came out and shouted; Ryan stopped the car and the owner took hold of the keys.

20 Counsel for Ryan described these events as a prank, a description with which the Crown Advocate took exception. We are bound to say that we agree that collectively these were relatively serious offences. The Court cannot condone the taking and driving away of a car, let alone driving with excess alcohol in the body and without third party insurance. On the other hand they do have a number of unusual features. First, the appellant made no serious attempt to make a get away and, indeed, stopped immediately he had been challenged by the owner of the car.
25 Secondly, it appears from the evidence that the owner of the car offered the appellant the opportunity to run away. The appellant declined that offer and chose to stay in order to explain that he was playing what he thought to be a practical joke. He was consequently detained and when the police were called he was
30 arrested.

35 We have looked closely at the transcript of the proceedings in the Police Court and we desire to say that we cannot fault the learned Magistrate's approach to this case. He indicated to Counsel at an early stage that he was contemplating a custodial sentence and he ordered a background report. Once he had received the report he gave it careful study and enumerated all relevant circumstances before imposing sentence. The Crown Advocate submitted that the sentence was neither wrong in
40 principal nor manifestly excessive and we agree.

45 On the other hand we have been influenced by the fact that the appellant is still a relatively young man; he is 22; he has one previous conviction before this Court when he was placed on probation for much more serious offences 4 years ago. Since that
50 time he has kept out of trouble and indeed he successfully

completed the probation order to the extent that this Court discharged him early from that sentence.

5 Because of the unusual features of this case we have been
persuaded as an act of mercy to allow the appellant one more
chance to keep out of prison. We propose, therefore, to
substitute the equivalent term of community service which is 100
hours. We express the hope that Ryan will take the necessary
10 steps to control his drinking which has clearly been the cause of
his offending.

We therefore allow the appeal and we quash the sentences
imposed by the Magistrate. We substitute a sentence of probation
for a period of one year subject to all the usual conditions which
15 we need not enumerate and subject to a further condition that he
completes, to the satisfaction of the community service organiser,
100 hours of community service. The sentence of disqualification
for holding a driving licence will remain. Mr. Scholfield, you
will have your costs.

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Authorities

- A.G. -v- Ryan, Mesney (20th April, 1990) Jersey Unreported.
A.G. -v- Whiteford (25th October, 1991) Jersey Unreported.
A.G. -v- Crossan (8th May, 1992) Jersey Unreported.
A.G. -v- Louvel & Ors. (19th February, 1993) Jersey Unreported.
A.G. -v- Dubois & Ors. (4th February, 1994) Jersey Unreported.
A.G. -v- Stopher (25th March 1994) Jersey Unreported.
Thomas: "Principles of Sentencing" (2nd Ed'n): pp. 35-36.