

ROYAL COURT

23rd May, 1988

Before: The Bailiff,
assisted by
Jurats Coutanche and Le Bouillier

Her Majesty's Attorney General

- v -

Giles Kristian Clifford Whitlam

Appeal against conviction for infraction
of Article 27 (as amended) of the
Road Traffic (Jersey) Law, 1956

Advocate S.C. Nicolle for the Crown
Advocate R.A. Falle for the Appellant

JUDGMENT

BAILIFF: The learned Magistrate had to ask himself whether the appellant had proved in this case, on a balance of probabilities, that he had no intention of avoiding his civil or criminal liability. The purpose of course of avoiding that liability would have been that he had had too much to drink and therefore had he reported it earlier the police might have arrested him earlier and found as a result of the medical tests that he was unfit to drive. But we cannot find in the transcript sufficient evidence that would have entitled the learned Assistant Magistrate to have come to that conclusion.

On the balance of probabilities the burden laid upon the defence is not as high as that laid on the prosecution of proving the facts beyond reasonable doubt. It is only as I have said the civil burden of proof: that of the balance of probabilities and therefore we find that the learned Magistrate did not pay sufficient attention to the evidence of Mrs Bannister; nor indeed to the accused himself or others who gave evidence about his condition; and there seems to be no contradiction about his condition even when the police finally were called. The accused could be criticised for moving the car quite so far to a car park. No doubt that was something which bore on the mind of the learned Assistant Magistrate, but having regard to all the circumstances we find that on the balance of probabilities, with respect to the Magistrate's decision, he misdirected himself and the appeal is allowed with costs.