ROYAL COURT

15th August, 1988

Before: The Bailiff and
Jurats Coutanche and Le Ruez

Her Majesty's Attorney General
- v -
Aurora Hotel Ltd., et ors

Appeal against conviction of
infraction of Article 80 of the
Licensing (Jersey) Law 1974

Advocate S.C. Nicolle for the Crown
Advocate T.J. Le Cocq for the appellants

JUDGMENT

BAILIFF: This appeal comes before us this morning as a result of a visit by the police to the Aurora Hotel during the evening of the 4th December, 1987. Consequent upon that visit and the finding of three men who were, in the opinion of the police, drunk at the time, the Aurora Hotel Ltd., Fiona Brennan, Arthur George Fogg, Susan Goaw and Kim Stockham were charged with permitting drunkenness on licensed premises, this being an infraction of Article 80 of the Licensing (Jersey) Law 1974.

During the course of the evidence, the Magistrate accepted that one of the persons found by the police had been on the premises for such a short time that it would not be fair and right to consider that he was on the premises drunk, in the sense that the staff could have had cognizance of his condition, and therefore the Magistrate confined himself to the other two persons, Lyon and Young. Now it is clear to us that their state of insobriety was quite advanced, but as Mr Le Cocq rightly said, there had to be two essential findings by the Magistrate before he could convict. First of all he had to ask himself whether the two persons were drunk, and there is no doubt that there was sufficient evidence for him to reach that conclusion. The second question was whether, before he could impute knowledge to the staff and therefore to the licensee, he could be satisfied that their condition was such that it must have been obviously apparent to the staff. I stop there for a moment because in fact the Magistrate based his principal decision on a mistake of law namely that the offence was an absolute offence. That ground of the appeal has been conceded by Miss Nicolle for the Crown. In opening Mr Le Cocq suggested that the finding in law, or the decision in law that the offence was an absolute one, in some way could have coloured the decision which the Magistrate arrived at, in imputing knowledge to the staff. It is clear to us from reading the transcript at page 136 that that criticism cannot be sustained. We are quite satisfied that the Magistrate was careful in what he said to divide the two matters clearly in his mind.

We are left to decide today whether there was sufficient evidence that would have justified the Magistrate in imputing the necessary knowledge to the staff as to the condition of the two men on the premises before the police arrived.

The leading case which deals with the question of imputing knowledge is that of A.G. -v- Chambers (1966) J.J. 607. Although that judgment refers to the previous statute, we see no reason why it should not be used in respect of the present statute because the wording is very similar in the appropriate and relevant articles. At page 609 the Court says this:

"The question which arises is how far is it justifiable to impute knowledge. Lord Parker C.J., in his judgment in the unreported case of Fransman -v- Sexton said: "Knowledge is not imputed by mere negligence but by something more than negligence, something which one can describe as reckless, sending out a car not caring what happens". He makes reference to this case in his judgment in Gray's Haulage Company Limited -v- Arnold 1966 1 W.L.R 534 and there he says at p. 536: "The case that is always referred to is James and Son Ltd -v- Smee, where in giving judgment I pointed out that knowledge is really of two kinds, actual knowledge and knowledge which arises from shutting one's eyes to the obvious, or, what is very much the same thing but put in another way, failing to do something or doing something not caring whether contravention takes place or not".

The extent to which it is justifiable to impute knowledge will depend to a great extent on the purpose for which the law is enacted. Knowledge should not be imputed when it is not justifiable to do so, but where the law is enacted, as is the Licensing Law, for the protection of public morality, a high standard of duty is required and it is by that standard that an appreciation is to be made of whether the licensee has failed to do something which he ought to have done, or has done something which he ought not to have done".

It is clear also from the transcript that the Magistrate had read those important passages to which I have referred. We therefore had to ask ourselves in this case whether there was sufficient evidence for him to find that the staff had failed in that high standard of duty. It is clear that it is a high standard, and our ruling today is not to be taken as an indication that we are suggesting that the high standard should in any way be departed from. Far from it. We wish to repeat what the Court said at that time that there is a high standard required of all licensees to see that the provisions of the Licensing Law are strictly and properly enforced.

The position in this case hinged on the evidence that was before the Magistrate. On the one hand, as we have said, the Magistrate was quite entitled to find that when the police entered the premises, two of the three men on the premises were drunk. Was that degree of drunkenness, however,

such that it must have been apparent to the staff and therefore to the licensee at the relevant time? It is clear that both men had been served with drink very shortly before the police arrived and if at that time they had been exhibiting any symptoms or signs that should have alerted the staff to their condition then we have no doubt that we would be right not to disturb the findings of the Magistrate. But the evidence was to the contrary. The evidence offered by the defence was that both men, when they became drunk, exhibited certain signs. Young was inclined to dance around and make silly jokes and Lyon was inclined to be morose, raise his voice and make objectionable remarks about people passing by, or in the pub. Neither of these symptoms were shown by either of the men according to the bar staff evidence. Should then they have noticed, notwithstanding that those symptoms had not been shown, that the men were in a condition in which they should not have been served and therefore fell within the prohibition provided for by Article 80 of the Law.

There is much in what Miss Nicolle said, that, if we allow this appeal, we may be suggesting that subjective standards of different staff at different establishments may be sufficient defence to charges of this nature. We do not think that this is a danger because each case must be decided on its own facts as put before the Court. It would be difficult, we think, to find facts similar to those in this case which would apply to every other licensing case of permitting drunkenness on licensed premises. We think that there is sufficient doubt in our minds to satisfy us that the strict burden of proof which lay upon the prosecution was not fulfilled by the police evidence. We know that it is difficult of course for the police to bring a prosecution under these circumstances. We cannot find that there was that degree of evident drunkenness, or signs, which we think it would be reasonable for the Magistrate to expect to have put before him before he could convict of imputed knowledge. Therefore the appeal succeeds, with costs.

Authorities

Paterson's Licensing Acts (96th Ed. 1988) p.p. 444 - 447

Somerset -v- Wade (1891) All E.R. p. 1228

A.G. -v- Chambers (1966) J.J. 607

Sweet -v- Parsley (HL) (1969) 1 All E.R. p. 347