

ROYAL COURT

27th October, 1988

Before: The Deputy Bailiff and
Jurats Coutanche and Baker.

Police Court Appeal : Dawson Campbell.

Appeal against conviction in respect of one
count of Article 16 (as amended) of the Road
Traffic (Jersey) Law, 1956.

Advocate S.C.K. Pallot for the Crown
Advocate R.J. Renouf for the Appellant.

JUDGMENT

DEPUTY BAILIFF: In this appeal the only question is whether the place where the Appellant and his car were, namely the car-park of J.J. Fox, International, Seaton Place, or Sand Street, St. Helier, was a "public place".

As Barry J. said in *R. -v- Kane and Others* (1965) 1 All E.R. 705, we do not propose to review the authorities as we have come to certain quite clear conclusions.

A public place for the purpose of Article 16(1) of the Road Traffic (Jersey) Law, 1956, means a place to which the public have access in fact. Whether a place is a "public place" is largely a question of degree and fact.

And it is for the prosecution to prove that a place is public.

The evidence of Mr. George Paterson was that members of the public, other than those to whom car-park spaces were let, used the car-park "frequently". The barrier was very rarely down and locked; its usual position was up. All sorts and conditions of people used the car-park. Mr. John Henriques said that over the weekend the car-park was open all the time, so the public use it to go shopping next door, which is Carrel's and nothing to do with J.J. Fox, and also to go across to the public house on the other side of the road and, at least during the summer, - this offence was committed on the 5th June - the barrier was up most of the time, in fact. When the Court visited the car-park the barrier was up. And indeed the Appellant himself said that he parked his car there, on the particular occasion as early as 6 o'clock p.m., and that his normal practice was to collect the car in the morning for his work, in other words he used the car-park for overnight parking.

Therefore, there was ample evidence upon which the Magistrate could find that the car-park was a "public place". At page 35 he found that, in fact, the owners, whatever their intention, failed to exclude people; that the vast majority of people who wanted to use the car-park did use it; that rightly or wrongly the public did have access to that particular place and used it for their own purposes; and that on the facts it was a public place.

We cannot fault that finding; accordingly the appeal is dismissed. (Advocate Renouf will have his legal aid costs).

As a result of our decision the disqualification which was suspended, pending appeal, starts today, and the Appellant must surrender his driving licence to the Greffier.

Authorities cited:

Wilkinson's Road Traffic Offences: 12th edition, 1985, para. 4.12.4.30-40.

John James Waters (1963) 47 Cr. App. R.149.

Elkins -v- Cartlidge (1947) 1 All E.R. 829.

R. -v- Kane & Others (1965) 1 All E.R. 705.