ROYAL COURT

16th January, 1989

Before: The Bailiff and
Jurats Blampied and Bonn

Her Majesty's Attorney General
- v -
Peter Robert Brown

Appeal against conviction by the Police Court in respect of one infraction of each of Articles 14, 16 and 27 (as amended) of the Road Traffic (Jersey) Law, 1956, and the sentence of imprisonment imposed in respect of the said Article 16 infraction.

Advocate S.C. Nicolle for the Crown
Advocate S.J. Habin for the accused.

JUDGMENT

BAILIFF: This is an appeal by Mr. Peter Robert Brown against his conviction on three offences under the Road Traffic (Jersey) Law, 1956, by the learnèd Assistant Magistrate on the 27th October, 1988. The three offences were first, under Article 16, that is to say, driving whilst under the influence of drink or drugs. Secondly, under Article 14, dangerous driving, and thirdly, under Article 27, driving off after an accident, to put it in colloquial terms.

The first ground of appeal is a general ground. The Assistant Magistrate is said to have failed to have applied the correct standard of proof (which as we all know is proof beyond reasonable doubt in a criminal prosecution). He is said to have done this because in reaching his decision, at page 58 of the transcript he uses the words: "I am satisfied". He continues: "I have listened very carefully to the evidence; there are a number of inconsistencies and improbabilities in Brown's evidence that I cannot accept: his story concerning the amount that he had to drink before the accident and the amount of vodka he drank after the accident, and so I find him guilty on Count 2. I am satisfied that the only amount of vodka he drank after the accident was the mouthful that he drank after the arrival in the flat of Miss McGregor and that the rest of the contents of the vodka bottle were poured away". He has used the words: "I am satisfied" again. In the first place he used the words: "I find him guilty". There is nothing in that passage, nor in the evidence itself which leads us to suppose that the Magistrate was applying the wrong standard of proof. There is no necessity for a Magistrate to use particular words. He must be taken to know what is required and he must apply the right test and unless there is clear evidence in the transcript, which in this case there is not, that he did not apply the right test, we cannot find that the general assertion of the submission of Mr. Habin can be supported and therefore we are unable to accept that part of his submission.

So we are left with the question of the evidence and the conclusions to be drawn from it. The accused's defence was that on arriving back at his flat he panicked - looking at his background, we see he is a man of some intelligence and experience - he then said that having panicked he started to drink a certain amount of vodka and that is the reason why he was found to have a very high content of alcohol in his blood when that was in due course examined in the laboratory. Mr. Habin has put forward as strong a case as he can, but there appears to us to be a number of inconsistencies between the accused's evidence to the police and what he told the learned Assistant Magistrate. Mr. Habin made a very strong point, it is true, that it was extraordinary that if his client's story were not correct, then how was it that the amount of alcohol in his blood was pretty well what would be expected of someone who had drunk the amount from a vodka bottle which the accused said he had. Of course, the question really hung on the point

whether his story was to be believed or rejected. That was merely one feature of the whole of the evidence.

Miss Nicolle, for the prosecution, pointed out quite rightly that there was not a very long time between his starting to consume the vodka, if he did, and the calling of the police, when he was seen by P.C. Houguez, by which time he was in a severe state of intoxication. That is a point which she rightly points out could well be inconsistent with his story of having drunk it immediately after his return. In any case, he indicated in his evidence that he sat for some time thinking and mulling it over. There is no evidence to suggest that he immediately drank it, but it is not for us to evaluate the evidence to that extent. What we have to ask ourselves is whether there was evidence before the Magistrate on which you could properly convict the accused of all three offences and if there was not, whether he was wrong to do so. It has been said time and time again that this Court must look at the evidence and review it in its own mind and only allow an appeal if the Court is satisfied that there is no evidence on which the Magistrate could convict, or insufficient for him to draw the conclusions which he did. We are unable to reach either of those conclusions. We are satisfied that there was sufficient evidence before the Assistant Magistrate for him to come to the conclusions he did and the decision he did. Likewise as regards Article 14 and Article 27, there is ample evidence as to what took place under Article 14. There is no doubt that if somebody is pulled into a shop doorway for fear of being injured by a car being driven erratically, that in itself is adequate evidence of dangerous driving. As regards Article 27, we think that the Magistrate was entitled to disregard the proviso if he wished. He heard the accused and he saw his demeanour in the box; he heard the other evidence and he reached the conclusion he did. It is quite true, as Mr. Habin has said, that the Magistrate was influenced by the fact that he rejected the defence under Article 16; it is all part of the same circumstances and therefore Mr. Habin, although you have said everything you can on behalf of your client, we are dismissing the appeal on conviction.

In respect of the sentence imposed, the Magistrate found that this was a serious case and the Court agrees. He was entitled to reach the conclusion that the appellant was driving with in excess of 200 milligrammes

per 100 millilitres of alcohol in his blood without the necessity for a laboratory test. In this particular case he had evidence before him as to what had been consumed and as Miss Nicolle says it is inconceivable that one mouthful would reduced the 230 to anything below 200 milligrammes per 100 millilitres. In any case of course the magic number is only a guide as the circumstances have to be taken into account as well. We have to ask ourselves therefore whether the Magistrate was wrong in principle, and we cannot find that he was. Whether the sentence of imprisonment was manifestly excessive and again we cannot find that it was, but when we had completed that exercise we then went on to ask ourselves whether in the light of the probation report, we would be justified, as an act of mercy, in substituting the sentence of imprisonment for one of community service; but we have reached the conclusion that we would not. The report is a good report and it shows your client in a favourable light, Mr. Habin, but he is a responsible man. This was out of character but it was an act of great irresponsibility and could have had serious consequences. Therefore the appeal against sentence of imprisonment is also dismissed. Mr. Habin, you will have your costs.

Authorities

Archbold 42nd Edition p. 492 para. 4-426.
Criminal Law Reports (1981) p.p. 779-780.
(1985-86) J.L.R N.6.