

ROYAL COURT

12th March, 1990

38.

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Myles and Hamon

Police Court Appeal: Linda Jane Trédant

Appeal against a £60.00 fine and
disqualification from holding or
obtaining a licence for a period
of three months imposed following
a conviction of failing to stop
and report an accident.

Advocate J.A. Clyde-Smith for the Crown.
Advocate R. Renouf for the appellant.

JUDGMENT

COMMISSIONER HAMON: On Thursday 11th January, 1990, Miss Trédant, the appellant, drove her car too fast along the main road leading to La Rocque. Just before the harbour, she lost control on the bend, and mounted the footpath on the south side of the road and struck a clinker boat with her car. This boat landed on a small tender and damage was caused. The front near side wheel rim of the appellant's car was badly buckled and the tyre was badly cut. The near side wing was also badly buckled exposing sharp steel edges. Clearly the boat and tender were also damaged.

There was no question of the appellant having been drinking and it was clearly a case of driving without due care and attention; and a pretty straightforward case at that.

Unfortunately Miss Trédant compounded the offence. In the words of her counsel 'she panicked'. She turned her car round (and it was then in a dangerous condition) and drove the few yards back to the Seymour Inn from where she had set out. She then telephoned the police and told them that her car had been damaged in the car park by a hit and run driver. She denied having caused any damage to the boat and tender. She was taken to Police Headquarters and, eventually after some two hours from the time that the police had arrived at the Seymour Inn car park, she made a cautioned statement admitting the offence.

There was some mitigation but she seems to have been an experienced driver, having driven a car for some six years and Mobylettes before that time. She had a clean driving licence and was a first offender. She expressed remorse.

She was charged with four offences under the Road Traffic Law, and pleaded guilty to all four. She was represented by counsel and Advocate Renouf again appears on her behalf today. She was charged with driving without due care and attention, failing to stop and report an accident, driving a motor vehicle the bodywork of which was in a dangerous condition and also with driving a motor vehicle the breaking system, steering gear, near side front wing and indicator, which were not maintained in good and efficient working order.

Counsel at trial asked that the matter be dealt with by fines and, in effect, she was fined a total of £120. But on the charge of failing to stop and report an accident she was also disqualified from driving for three months. She was not disqualified for the offence of driving without due care and attention. From the transcript what the Magistrate said was this:

"On Count 1 you will be fined £40 or one week; on Count 2 £60 or one week consecutive. What you did was very wrong. You not merely drove off after an accident, but you also deliberately misled the police by making a false phone call and that was an act of dishonesty. So I cannot be satisfied with just a fine and on that count I'm afraid you will have to be disqualified for three months".

The Relief Magistrate clearly wished to punish the dishonesty and under the law he was entitled to do so.

However, two points arise. The first is that the Relief Magistrate may not have been aware that Miss Trédant needed her licence for her employment. Counsel, just before he pronounced sentence, said this:

"She works as a nanny for a family. She looks after three children and has been doing so for a number of years".

At this appeal we were presented with an excellent reference from Miss Trédant's employer which in part says this:

"You will see that her ability to do her job to the full is dependent on her being able to drive. As part of her regular duties she collects the children from school every afternoon in her car and delivers them to their various after school activities throughout the Island".

Mr. Clyde-Smith who appeared for the Attorney General, acknowledged that the Magistrate might not have been aware that a driving licence was essential to her job.

But on this point we appear to have inconsistencies even in the judgments of this Court on this point. In the case of Short -v- AG 1985-86 JLR N^o9, which is reported as being heard on November 4th, 1985, the Court said (and it is a report of the Court's judgment):

"Disqualification from driving is not invariably imposed after a conviction for failing to stop and report a road traffic accident

contrary to the Road Traffic (Jersey) Law, 1956, Article 27/1 as Amended. Punishment by a fine alone may be more appropriate in some cases".

Whilst some twenty years earlier in the case of AG -v- P.F. Kane (1950-1966) J 501, the Inferior Number said:

"The first and foremost consideration in deciding the appropriate sentence is the public interest and one of the ways in which this interest is served is by imposing a sentence which will deter not only the person convicted but also other persons from committing offences of a similar nature. It would be a complete negation of this principle if it were to be held that a person who requires a driving licence for the purpose of his living is entitled to special consideration. Moreover there is no indication in the Road Traffic Law that legislature intended any distinction to be made in this sense. We therefore find that the fact that the livelihood and employment of the appellant is dependent on his holding a driving licence is not a good ground of appeal".

Now that case is inconsistent with the later case which was reported on the 8th February, 1990, in the "Jersey Evening Post" where the Magistrate, Mr. Short, is reported to have said that it was because John Fenton Philip Haines, 24, was a first offender and because he held a responsible job as a driver with Shephard Hill that he had decided not to impose a period of disqualification. That case was clearly a serious case of driving for a considerable distance through country parishes with a flat tyre and where drink may also have been a consistent part of the offence.

Many helpful English authorities were given to us by Mr. Clyde-Smith. We do not need to refer to them because as we say, this sentence was imposed on the 8th February by the Magistrate, some five days before Miss Trédant's case came before the Relief Magistrate.

The lack of consistency does disturb us but we must say that we feel that the Relief Magistrate was perfectly entitled to do what he did and we do not wish to lay down any guidelines because the Magistrate

must be guided by his discretion at all times. But in the circumstances and because there may well be a sense of grievance felt by Miss Trédant what we intend to do is to reduce the disqualification from three months to one month so that Miss Trédant will in fact get her licence back immediately.

In closing I think I must say that this Court is most grateful to Mr. Clyde-Smith and indeed to Mr. Renouf, but particularly to Mr. Clyde-Smith for the help and assistance he has given us in this small but troublesome matter. Mr. Renouf, you shall have your legal aid costs.

Authorities referred to:

Shaw -v- AG 1985-86 JLR N.49.

AG -v- P.F. Kane (1950-1966) JJ 501.

Police Court Appeal: Andrew Williams (16th October, 1989) Jersey
Unreported.

A Practical Approach to Sentencing by C.J. Emmins (1985 Ed.) at p.249:

"17.4: Offences involving discretionary disqualification"; and at p.254:

"17.7: Sentencing Policy in relation to disqualification"; and at p.p.307
and 308.

Sentencing Law and Practice by C.K. Boyle and M. Allen (1985 Ed.) at
p.p.193 et seq re disqualification.