

ROYAL COURT

13th August, 1990

116.

Before: P.R. Le Cras, Esq., Commissioner, and
Jurats Bonn and Le Ruez

Police Court Appeal: Peter Edward Le Bailly

Appeal against conviction on one charge
of driving whilst intoxicated.

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

JUDGMENT

COMMISSIONER LE CRAS: The appeal before us concerns a subject about which there has been a good deal of discussion. It comes before us in this way; that at the hearing in the Police Court the Centenier stated that this was a routine stop and that there was nothing wrong with the van. The Police Constable who stopped the van was not heard, nor for that matter was the appellant. It is common ground that once stopped, the appellant was tested and found to be over the limit.

At the hearing in the lower Court the learned Magistrate mentioned that although the point had not been taken, the question of whether this was a random stop and whether the Island desires random stops would have to be decided in the near future. He then imposed the minimum penalty. Upon this the appeal was brought forward.

For the purposes of this hearing the Crown was prepared to concede that this was a routine check, that there was not necessarily any reason to stop the vehicle, nor was there any evidence of or reason to suspect the commission of a motoring offence, but did not concede that the Officer was acting unlawfully.

Advocate Renouf for the appellant put it in this way: that although it was not illegal to stop a car, a Police Officer is not entitled to stop a driver to see if he is over the limit and that we really do not know what the Officer was doing and that in the absence of evidence to the contrary, there must be a reasonable doubt as to whether he stopped the vehicle to check. That is that he knowingly exceeded his powers. This may be, he said, the mala fides and that if there is no reasonable cause then the Police Officer was conducting a random check and that this was not the policy of the States when the law was passed.

It is accepted before us that the powers of the Police to stop vehicles in the Island are the same as they are in England. The law reads in Article 16(b):

"Breath tests.

1. Where a Police Officer has reasonable cause to suspect that a person driving has alcohol in his body he may require him to provide a specimen of breath for a breath test

In the cases put to us there is a clear distinction so it seems to us between requiring breath tests at random which are plainly prohibited by the Article and the random stopping of cars within limits and the subsequent testing of the driver by the Police where they form a view that the driver is under the influence of alcohol.

The view we take is that there are no grounds on the concessions and admissions before us which would entitle us to quash the decision of the learned Magistrate. What we do not know, for it is not in evidence, is whether any question of malpractice by the Police arises. To ascertain this the evidence must and should be heard and weighed.

We have no evidence before us as conceded by Mr. Pallot as to why the Police Officer stopped the vehicle, nor as to any of the surrounding circumstances.

The case must go back to the Police Court for evidence to be heard on these points. In those circumstances we propose to say no more at this stage in order not to fetter the Court once the facts are ascertained. Pending the hearing or the abandonment of the appeal the fine and disqualification must stand in abeyance. Costs on the legal aid scale of and incidental to this appeal.

Authorities referred to:

Wilkinson's Road Traffic Offences (14th Ed'n) (Vol 1) at pp 1/215 and
1/216.

Archbold (43rd Ed'n) at pp 1293 - 1300 inclusive.

Winter -v- Barlow (1980) RTR 209.

Such -v- Ball (1982) RTR 140.

Steel -v- Goacher (1983) RTR 98.

Chief Constable of Gwent -v- Dash (1986) RTR 41.

Fox -v- Chief Constable of Gwent (1985) 3 All ER 392.