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ROYAL COURT

(Samedi)

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7th January, 1991

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Bonn and Le Ruez

The Attorney General

- v -

Robert Alan Endsor

Police Court Appeal - appeal against sentence of two years' disqualification imposed following conviction under Article 16A(1)(a) of the Road Traffic (Jersey) Law, 1956 - appellant was only marginally over the prescribed limit.

No previous drink/driving offences (but appellant had record of other motoring offences).

No bad behaviour or bad driving attendant upon the offence (although appellant was convicted of driving at 51 m.p.h. at 1.00 a.m. on a straight road on a dry night in a 40 m.p.h zone).

Advocate S.C.K. Pallot for the Crown.

Advocate P.C. Sinel for the appellant.

JUDGMENT

COMMISSIONER HAMON: There is something that has been exercising our minds and because this is an appeal, we felt perhaps, Mr. Sinel and Mr.

Pallot, that you might like to consider it. Can I just put the point to you in this way. If you look at Count 1, the appellant was charged (and he pleaded guilty) that he drove the motor vehicle in the circumstances set out in the charge after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, and we know that the amount in his breath was 46.

If you will look at Article 16(d) of the Law and because this is a new Law, perhaps we ought to exercise some care, it says: "Of any two specimens of breath provided by any person in pursuance of Article 16(c) of this Law, that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded. But if the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath" (as in this case) "the person who provides it may claim that it should be replaced by such specimen as may be required in paragraph 4 of Article 16(c) of this Law. And if he then provides such a specimen neither specimen of breath shall be used".

Looking at the documents that we read overnight, form (b) was presented to the appellant at 2.05 on Sunday the 26th August. It is a printed form and it says: "As a specimen with the lower proportion of alcohol is in excess of the prescribed limit, but contains no more than 50 microgrammes of alcohol in 100 millilitres of breath you have an option to claim that it should be replaced by another specimen for a laboratory test. If you elect to supply such a specimen it will be of blood or urine. Do you wish to supply such a specimen?" Reply: "Yes". If the accused replied "yes" to question 'A' which he did, the next question was: "Do you wish to make any representation as to what type of specimen you wish to supply?" Reply: "Blood" and that is the end of it .

I am bothered at this stage, Mr. Sinel, to be fair to you, but I wonder if we went away for five minutes, you could talk to Mr. Pallot about this, because there may be nothing in it at all and it is not for the Court to find grounds for appeal, but it does bother us that your client was charged on a breath sample when, on the face of it, as we

read Article 16(d), he should have been charged with so much alcohol in the blood and not in the breath. Is that clear; do you understand?

He was driving at 51 m.p.h. at 1.20 a.m. on St. Martin's main road on the 9th August of last year when he was stopped by a Police Constable operating a hand-held radar device. Tests later revealed that he held 46 microgrammes of alcohol in the breath and 93 milligrammes in the blood, which is just about the limit, but still above the prescribed limit.

In sentencing him the Magistrate did seem to relate, as Mr. Sinel has pointed out to us, the drink offence with the speeding offence and it is true to say that the appellant has had two speeding offences in the past twelve years and the latest of those two speeding offences was in June of last year. But that does not seem to get away from the fact that we are dealing here with a first offender, and where the Magistrate says that he is going to exercise leniency and then disqualifies the appellant for two years, we wonder whether in fact that is a lenient sentence.

We are also disturbed to see that a previous first offender a few months earlier in a case cited to us, that of Phillipe Hamon in fact received a twelve months' disqualification. Of course, as Mr. Pallot quite rightly says, we have to look at how the Magistrate exercised his discretion in the difficult circumstances in which the Police Court operates. We have also to concern ourselves that there might be a sense of grievance by this appellant at the two-year disqualification.

In the circumstances and simply in those circumstances that as he is a first offender, and he is just over the limit, we are going to substitute the two-year disqualification for the one-year disqualification. We would, in saying that, make this point, that our decision in no way is concerned with what the appellant does for a living. We do not feel that that has anything to do with the merits of this appeal. Mr. Sinel, you shall have your legal aid costs.

Authorities cited

4 Halsbury 11(2) paras 1187-1198.

Walls and Brownlie: Drink, Drugs and Driving (2nd Ed'n) pp 170-174; 226-228.

Wilkinson's Road Traffic Offences (13th Ed'n) Vol. I paras 4.121 to 4.123.

Jersey Evening Post, 29th November, 1990, Report on Police Court case of Phillipe Eric Hamon.