

ROYAL COURT  
(Samedi Division)

11th February, 1991

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Before: The Bailiff, and Jurats  
Gruchy and Orchard

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Police Court Appeal: Mrs. Rosa Torrell,  
née Clavero

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Appeal against conviction in respect  
of offences under Articles 15 and 27  
of the Road Traffic (Jersey) Law,  
1956.

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Miss S.C. Nicolle, Crown Advocate.  
Advocate A.O. Dart for the Appellant.

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**JUDGMENT**

BAILIFF: The principles to be observed by this Court, which is an Appellate Court as regards appeals from the Police Court, are those succinctly stated and referred to by Mr. Dart, who made a most exhaustive review of the authorities and presented his client's case with cogency and accuracy. The principles I have just mentioned, as I say, are set out in Phipson on Evidence (14th Ed'n) S.7-11, and the passage to which I wish to refer is as follows:

"An appellate tribunal is not always entitled to review decisions of fact, e.g. where there is an appeal from an official referee or

on case stated. But in many cases, as in an appeal from the High Court in a non-jury case, the appellate tribunal has jurisdiction to review the findings of fact. In such a case the judge's finding, made after hearing the witnesses and observing their demeanour, is entitled to great weight and should not be disturbed unless it is clear that it is unsound. However, it is open to an appellate court to find that the view of a witness was ill-founded; or that the judge has not taken proper advantage of his having seen and heard the witnesses, or that the judge should have treated a particular kind of evidence differently\*.

So we have approached this appeal in the light of that statement, which has in fact been the position in cases of appeals of this nature for many years.

The Magistrate was faced, as Mr. Dart very fairly said, with a direct conflict of evidence. There was no independent evidence as to exactly where the accident took place, because neither party remained on the scene. It is said by the prosecution that the appellant left, in breach of Article 27 of the Road Traffic (Jersey) Law, 1956, and the complainant, who was the other party, in his evidence said that he followed the appellant's car and therefore it was not possible for the police or any traffic inspector to examine the scene.

Therefore the Magistrate was faced with conflicting evidence of the parties. He had on the one hand the evidence of Mr. and Mrs. Leo which substantially remained unaffected, although there was a very careful cross-examination of each of them and on the other hand the evidence of the appellant. He chose to accept the evidence of Mr. and Mrs. Leo and therefore convicted the appellant under Article 15 of the above Law. We cannot find in looking at the evidence under Article 15 that the Magistrate could not have come on the evidence before him to that conclusion and therefore the appeal under Article 15 is dismissed.

In respect of Article 27 the position is this: the person who is charged under Article 27 is entitled to show to the Magistrate that he or she was not aware that an accident had taken place and the burden of

proof is upon them only to the extent of the balance of probabilities in such a case.

I do not think it necessary for me to go into the detailed examination of what constitutes an accident. Mr. Dart admitted that there had been an accident in the sense that there had been sufficient physical damage caused so as not to put it within the range of the "de minimis" rule which has been referred to in the authorities, but he said that what we had to consider and therefore what the learned Magistrate had had to consider was: what was in the mind of Mrs. Torrell, the appellant. In other words what she thought had happened and if we found that the Magistrate ought to have considered that and found that what she thought had happened indeed had happened, she was not therefore under a duty to stop.

We were informed by Mr. Dart on the instructions of the appellant that she had previously had an experience when her wing mirror had clipped another car's wing mirror; that she had stopped and that she had later called at a Police Station and been told by a Sergeant or someone in charge that it was a 50/50 chance and that therefore she was in the same mind as a result of what had happened on the evening in question in respect of the occurrence between her and Mr. and Mrs. Leos' car.

In support of the appellant's contention that she thought it was merely a wing clipping and that therefore it did not really matter whether she stopped or not; she wasn't under a duty to do so, Mr. Dart has pointed out that she was not aware of any damage until the police arrived at her premises. She thought it was only the wing mirrors and anyway the other driver hadn't stopped.

These were all matters adduced as evidence before the Magistrate. Mrs. Torrell gave evidence that she thought she'd only clipped the wing mirrors; that she saw the other driver hadn't stopped when she looked round. It is quite true that she took - according to her evidence - her intended route back and that is a matter which the Magistrate could well have taken into account. She was surprised, according to the police, at the amount of the damage. Against that, her car suffered

considerable damage which the police set out in great detail in the evidence. The evidence of both police officers indicated the amount of the damage and the drivers of the other car, particularly Mrs. Leo, suggested that there must have been a loud bang and indeed the police were of the same opinion. It was open to the Magistrate to find that the violence of the impact was such that Mrs. Torrell must have been aware that there had been more than a mere clashing of the mirrors. The evidence of the facts were that she in fact drove on. Mr. and Mrs. Leo said they followed and flashed their lights. Furthermore Mrs. Torrell did not report the accident. It turns on the balance of probabilities and it is a matter for the Magistrate in relation to the knowledge of the driver. I wish to cite from a passage which Mr. Dart referred us to in Wilkinson's Road Traffic Offences 14th Edition Section 7.7 where the author says this:

"It is the 'driver' who has the duties under s 170, not the owner or anyone else save in so far as the latter may aid, abet, counsel or procure the driver's failure.

The requirement imposed by the provisions of s 170 only applies if the defendant knows that an accident has occurred...." (and that is the case in *Harding v Price* and there are other cases which are referred to in the section and by Mr. Dart: the case of *Hampson v. Powell* [1970] 1 All ER 929 at 931h to 932a, and the latest case of *Selby v. Chief Constable of Avon and Somerset* [1988] RTR 216 at 221k to 224a). But the author goes on: "The judges held in *Harding v Price* that there was a positive duty - something more than a mere prohibition - imposed by the statute to report and the driver could not discharge that duty unless he had knowledge of the accident. When the case was decided 'knowledge' was thought to include wilfully shutting one's eyes to the obvious. This view is nowadays not put forward quite in this form: 'knowledge' refers also to the situation where the driver really knows that there has been an accident but deliberately chooses to put it out of his mind. Usually the prosecution can show either that the defendant actually knew of the accident or that he ought reasonably to have known of it, e.g. by there being a severe jolt or a loud crash at the time. Once the damage or injury has been proved, the burden of proof is on the defence to

produce some evidence of the defendant's genuine unawareness of them".

In our opinion, Mrs. Torrell knew full well that there had been an accident and the Magistrate was entitled to find that she knew. She drove off after the accident and did not satisfy the Magistrate on the balance of probabilities that she was genuinely unaware of the accident. Indeed, all the facts point to the contrary and therefore the Magistrate was entitled on the evidence before him to convict and accordingly the appeal under Article 27 is also dismissed.

Mr. Dart, you shall have your legal aid costs.

Authorities cited:

Phipson on Evidence (14th Ed'n) S.7-11.

Watt or Thomas -v- Thomas [1947] AC 484.

Wilkinson's Road Traffic Offences (14th Ed'n) S.5.27.

R. -v- Carr-Briant [1943] 1 KB 607 at 612.

Wilkinson's Road Traffic Offences (14th Ed'n) S.7.8.

Wilkinson's Road Traffic Offences (14th Ed'n) S.1.46-50.

R. -v- Morris [1972] RTR 201 at 204B to 204J.

Chief Constable of West Midlands Police -v- Billingham [1979] RTR 446  
at 452A to 453C.

Chief Constable of Staffordshire -v- Lees [1981] RTR 506 at 509D  
to 510C.

Wilkinson's Road Traffic Offences (14th Ed'n) S.7.7.

Harding -v- Price [1948] 1 KB 695 at 700 to 701.

Hampson -v- Powell [1970] 1 All ER 929 at 931h to 932a.

Selby -v- Chief Constable of Avon and Somerset [1988] RTR 216 at 221K  
to 224A.