ROYAL COURT

9.

20th January, 1992

Before: The Bailiff, and
Jurats Bonn and Herbert

Attorney General

- v -

Paul Howard Steer

Police Court Appeal: Appeal against conviction in respect of an infraction of Article 16A(1) of the Road Traffic (Jersey) Law, 1956.

Advocate Mrs. S.A. Pearmain on behalf of the Attorney General.

Advocate F.J. Benest for the Appellant.

JUDGMENT

THE BAILIFF: The facts of this case are quite simple. The appellant drove up Gloucester Street against the one-way traffic arrangements at about 1.30 a.m. on the 30th August, 1991, and was caught by the police. They smelt alcohol; he was

breathalysed, taken to Police Headquarters, and a blood sample was taken; approximately half of the sample was given to him; he was eventually charged with having alcohol above the prescribed limit. He was therefore in contravention, it was said, of Article 16A(1) of the Road Traffic (Jersey) Law, 1956.

The amount of alcohol in his blood was shown to be 82, which is over the limit. Unfortunately, he does not appear to have been told unequivocally that he should get the sample tested. On the other hand, the Law does not require the police to give a sample unless they are asked for it. It is not unfair to say that a person who asks for a sample and gets it, himself is under a duty as a matter of common prudence to see that that sample is analysed as quickly as possible.

In this particular case this did not happen and although the police sample which was analysed very quickly on the same day by the States Analyst showed the figure I have mentioned of 82, the appellant's sample was not analysed until some eight weeks later, when it showed a figure of 78.

There was also some discussion about a further sample and the police agreed to let the appellant have some of the remaining blood from the original sample which the police had taken and that was analysed as well on the same day in October and showed a reading of 77, but we will ignore that one because Mr. Benest for the appellant has asked us to do so.

In the course of his evidence the States Official Analyst, a very experienced scientist, who has given evidence in this Court on many occasions, was quite clear that the analysis showed - at the time he or his staff analysed it - 82. He was cross-examined very thoroughly by the appellant's advocate and he gave evidence that the deterioration would be one or two, but

a minimum of one probably, over a period of weeks, but he did agree that the figures he was using could have been based - to put it no higher than that - on some older figures of textbooks going back 20 or 30 years. Whether that is so or not, his evidence was accepted by the Assistant Magistrate, who says in his findings on p.28 of the depositions of transcripts: *"Mr. Holliday gave in evidence that the blood/alcohol sample can lose a maximum between one and two milligrams per week, if kept in good condition. The minimum, however, could be said to be a good deal less than that".* Indeed he went further and gave the opinion that *"The results of the analysis of the second half of the sample actually confirmed the early analysis of the first. The Court has no difficulty in accepting that evidence".*

We have difficulty today inasmuch as a letter has been put in by agreement with Mrs. Pearmain for the Attorney General, which comes from a public analyst's department called Central Scientific. I am not sure whether this is a private or public company, or a government company, it does not matter. According to the letter which has been put in, that letter says that samples which they cite "lost alcohol at a surprisingly low rate, approximately 0.3 milligrams/millilitre per month". If one uses that letter, one arrives at a figure calculated backwards at something like 78.3 at the time when Mr. Holliday said he found 82 milligrams/millilitre in the blood.

Had evidence to that effect been before the learned Assistant Magistrate it is impossible to say what his decision would have been. As it was, it was not there. There were some irregularities we think, although having criticised the appellant for not himself instigating an early analysis of part of the sample, it is wrong, we think, that he should learn from the police some fortnight or so later, during a casual encounter, that the results had been obtained, because the

police evidence and also the evidence of Mr. Steer was that he was going to be informed of the result.

There is a suggestion of practice if not law that anything over five days old would not be analysed, and certainly in the letter I have mentioned, the analyst refers to having doubts about analysing a sample more than one week old.

Under all the circumstances, having regard to the very clear provisions in the Law, which are there to protect an accused person if he thinks he has not drunk as much as is suggested, or if he thinks the blood/alcohol level is not going to support a prosecution and he wishes to be protected, and which require substantially one-half of the sample taken from him to be given to him, we think that clearer arrangements should have been made for that sample to be analysed, or at least Mr. Steer should have been warned that it was his duty and indeed necessary to have it analysed quickly, which he was not. We have come to the conclusion that we ought to allow this appeal.

At one stage we did consider whether we should call Mr. Holliday before us and examine him on this letter, or whether we should send the whole case back to the Police Court for further evidence to be taken, but came to the conclusion that we should dispose of it this morning in the interests of justice. Accordingly the appeal is allowed.

No authorities.