

JERSEY / JUDGMENT

# AG v Parrington [2003] JRC 220 (01 December 2003)

**[2003] JRC 220**

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## JUDGMENT

THE DEPUTY BAILIFF: 1. On the 23 rd September, 2003, the appellant was convicted before the Relief Magistrate, Mr Sowden, of one count of being drunk and disorderly and was sentenced to 7 days' imprisonment. He now appeals against conviction on the grounds that he could not reasonably have been convicted on the evidence produced to the Relief Magistrate. 2. There was one prosecution witness, a P. C. Gingell . He said that in the early hours of Sunday, 20 th July, he was on mobile patrol when he was asked to attend Trinity Hill where it was said a male was sitting in the road obstructing traffic and causing a general nuisance. On his arrival the officer saw the defendant sitting in the middle of the road. His trousers and pants were down by his ankles. As the officer approached him the appellant shouted and swore at him, telling the officer to fuck off. 3. The officer lifted the appellant to his feet and escorted him to the side of the road. There the appellant continued to shout and swear at the officer. He then stepped away and adopted a boxing stance. He threw a number of punches in the officer's direction. It is clear, however, from the officer's evidence that, because of the appellant's condition, there was no chance that they were going to connect; they were well wide of the mark. 4. The officer noticed that the appellant's eyes were glazed, he was unsteady on his feet and his speech was slurred. The officer formed the opinion that the appellant was drunk. However, he volunteered in his evidence that he had not smelt any alcohol on the appellant's breath. Because of the way he was behaving the appellant was put in handcuffs and taken to police headquarters. There he was taken straight to a cell as he was deemed unfit for interview by the custody sergeant. 5. In answer to questions from the Relief Magistrate the officer said that people who were drunk did not necessarily smell of alcohol as certain drinks did not leave a smell, for example, vodka. Notwithstanding, the lack of smell the officer was satisfied that the appellant's actions were due to drink. 6. The appellant also gave evidence before the Relief Magistrate. He said that he had consumed a total of only 4 pints of lager during the evening of which 2 had lemonade added, first at a pub and then at a Club on the Esplanade. He said he could remember nothing after that until waking up in the cell the next morning. He could not recall having seen PC Gingell or any of the events which the officer described, nor indeed could he recall walking home. 7. However, he did not believe that he could have been drunk and disorderly in this way after only 4 pints. Indeed the next morning when he was told by the duty sergeant why he was detained, he asked to provide a blood sample for

analysis. The reasons that he gave to the officers at the time were not terribly clear, but Miss Fogarty says that he was concerned that his drink had been spiked. However, the duty sergeant did not take up the suggestion. 8. The appellant was unrepresented before the Relief Magistrate who, on the basis of the evidence that we have just described, convicted him. Miss Fogarty now raises a number of points in support of her contention that it was not reasonable to convict on this evidence. 9. First, she refers to the fact that the police officer did not state specifically that he had arrested and cautioned the defendant. However, it is quite obvious that the appellant was arrested; he was handcuffed and taken to Police Headquarters. Of course, he should have been cautioned, and we do not know whether he was, but it is not relevant in this case because he was not interviewed. We find the fact that the police officer did not say formally that he had arrested the appellant is quite irrelevant in this case, which is concerned with whether the appellant was in fact drunk and disorderly. 10. Secondly, Miss Fogarty submits that the custody sergeant's failure the next morning to call the police doctor to take a blood sample was a breach of paragraph 9.4 of Code C. Paragraph 9.4 says this: "If a detained person requests a medical examination the police surgeon must be called as soon as practicable. He/she may in addition be examined by a medical practitioner of his/her own choice at his/her own expense. 11. Paragraph 9.4 comes within a section which is dealing generally with the medical condition of the detained person. In our judgment it is clearly dealing with cases where it is appropriate to call the police doctor because of the medical condition of the detained person. That is not what was happening here. This was a request the next morning when the appellant was perfectly healthy but he wished to obtain evidence by way of an analysis of his blood. We do not think that this part of the code is dealing with the obtaining of evidence. 12. However, it does seem to us that the duty sergeant should have acceded to this request. Where a person is detained and wishes to try and obtain evidence which may assist him in proving his innocence it seems only right that the police should generally do what they can to assist, as they, of course, are the only persons who can do so, because the suspect is detained and cannot himself obtain evidence. 13. Therefore, if a person, in a case where consumption of drink or other substances is an issue, wishes to have his blood analysed, we would have thought that, in general - although it would, of course, depend on the circumstances - the police ought to co-operate in enabling the defendant to obtain such a sample. However, that, of course, does not determine the matter because what we have to decide is not whether everything was done that could be done in this case, but whether the conviction is safe and whether it was open to the Magistrate to convict on the basis of that evidence. 14. Thirdly, Miss Fogarty submits that the Relief Magistrate, should have called the custody officer to prove the request from the appellant for a blood sample. We do not agree. The appellant raised this issue in evidence and there is no suggestion that the Relief Magistrate disbelieved him in any way on this topic. 15. Finally, and in summary, Miss Fogarty submitted that because of the failure to obtain the sample and the question of the lack of the smell of alcohol it was possible that the drink had been spiked on this occasion and the Relief Magistrate should, therefore, not have convicted. 16. It is agreed by both parties that in order to convict of this offence the Court has to find two elements, namely that the alleged offender is drunk, and that he was disorderly. In relation to the question of being disorderly, it is accepted by Miss Fogarty, that there is evidence of disorderly conduct, namely shouting and swearing and throwing rather ineffective punches.

The question is whether the court was right to find that this occurred through drink. As we say Miss Fogarty refers to the fact that his breath did not smell of alcohol, that there was no evidence that he had been drinking something like vodka which would not have smelt; on the contrary the evidence was that he had been drinking beer. 17. We have carefully considered Miss Fogarty's submissions but in our judgment there was ample evidence upon which the Magistrate could properly conclude that the disorderly conduct in this case resulted from drink. The fact that the police officer says that he did not smell alcohol on the appellant's breath is not very significant in this particular case, because, on his own admission, the appellant had been drinking beer. The likely explanation must, therefore, be that his breath did indeed smell of alcohol but that the police officer simply failed to spot it. 18. At the end of the day the Magistrate had evidence from a police officer who had been present at the scene and who said that he was in no doubt that the appellant was drunk. In our judgment it was open to the Magistrate to accept that evidence and if he did accept that evidence there was evidence upon which he could properly convict. We do not find that the failure to take a sample, in this case, means that it was unsafe or unreasonable for the Magistrate to convict upon the evidence which he heard and we therefore dismiss the appeal against conviction. 19. The appellant also appeals against sentence. He was sentenced to 7 days' imprisonment. The Crown has not sought to uphold this sentence and in our judgment it was absolutely right not to do so. This was a very minor offence. Furthermore, the appellant had never been convicted of being drunk and disorderly previously. 20. It is true that he had certain previous convictions. In 2002 he had been convicted of failing to provide a specimen when required to do so after driving a car. Back in 1991 he had also been convicted of driving with excess alcohol and in 1988 he had various motoring offences. But in our judgment none of these begin to justify a sentence of imprisonment for a first offence of being drunk and disorderly. The correct sentence should have been a modest fine or a binding over order. The appellant has in fact served the sentence of 7 days' imprisonment which in our judgment he should not have done. 21. Therefore, although this would not have been the correct sentence for the Relief Magistrate to pass, we think the only fair sentence to pass is one of an absolute discharge, because he has in fact served a far heavier sentence than was appropriate. So we, therefore, allow the appeal against sentence, quash the seven days' imprisonment and substitute an absolute discharge. Authorities *Edgeworth-v-AG* [1990 JLR N.17. *Blackstone Criminal Practice* (2001 Ed'n): para F.1.10. *Little-v-AG* (12th September, 1994) *Jersey Unreported* [1994/184]. *Magistrate's Court (Miscellaneous Provisions)(Jersey) Law, 1949: Articles 15, 17. States of Jersey Police: Code of Practice for Detention, Treatment, and Questioning of Persons by Police Officers: Code C: Chapter 9: pp.20-21. Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII*

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Prepared on 23 October 2026 · Esheria