

JERSEY / JUDGMENT

# B -v- AG [2012] JRC 051 (14 March 2012)

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## JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal against a decision by the Youth Court to fine the appellant the sum of £600 which was to be paid within three months and to disqualify the appellant from driving for a period of 92 weeks. 2. The facts are, as reported to the Youth Court, that at just after 1 o'clock in the morning of 17 th December, 2011, a road traffic accident was reported by a member of the public. Honorary police attended at the scene and they found a car had been abandoned and the driver could not be found. They attended the address of the appellant where he was asleep in his bedroom. Intoxicants could be smelt immediately on entering the room and there were seat belt marks across his upper body. He was groggy and confused in his demeanour with a pale face. He was described as drunk; he stated "I drove my hark(sic) home". The keys to the vehicle could not be located and he was arrested on suspicion of driving whilst over the prescribed limit; he undertook the intoxiliser test which recorded the lowest reading of 65 micrograms in 100 millilitres of breath. The evidence before the Youth Court included that when the police woke him up, water had to be thrown over him in order to bring him round. 3. The appeal is brought on the basis that the sentence imposed was manifestly excessive and it will be obvious from the time that we have spent out discussing the matter that members of the Panel have given very anxious consideration to the appeal but we have remembered that we are not here to sentence the appellant today, but to review the sentence which was imposed in the Youth Court. There is a margin of appreciation which is left to the sentencing Court, recognising that different courts will come to different conclusions, each of which are objectively reasonable. The test which we have to apply is whether this sentence was manifestly excessive. 4. The appellant and Mr Baglin relied very heavily on the fact that at 65 micrograms of alcohol per 100 millilitres of breath, the offence fell within Band B of the guidelines which the Magistrate's Court has published, which would suggest a fine of £400-£600 and 15-18 months' disqualification. He accepted that the guidelines are not tramlines but he said that one should pay great attention to that and that the aggravating factors which were identified by the Youth Court were not sufficient to justify taking a different approach and imposing a disqualification which was towards the top end of the next band and a fine which was at the top of Band B. 5. The aggravating factors that were taken into account were certainly the extent of the evidence of drunkenness that was given to the Youth Court, which we have described a moment ago, and also it seems to us that this was probably a factor which weighed very heavily with the Youth Court, the fact that the appellant had passed his test the day before this incident took place.

It was said to us by Mr Baglin that the appellant was no different from any other driver on the road and this was an aggravating feature which should not have been taken into account because he had passed his test and he was entitled to drive. We think that the Youth Court was entirely entitled to take into account that the inexperience of this driver was an aggravating factor but in particular that the test had been passed the day before. The Youth Court would no doubt have had in mind the sort of factors which Mr Hopwood mentioned, that the appellant did not have the credit which the average driver would have for a driving record without blemish, and we think that the Youth Court was entitled to reach the view that there was before it on this occasion, a young person who, on the facts, did need to do some growing up. 6. For those reasons we think that the disqualification and the fine are not outside the bands, and I do not use that in the context of the guidelines, but not outside the bands of a sentence where this Court, as an Appeal Court should intervene, and therefore the appeal to that extent fails. 7. One submission which Mr Baglin did put forward was that the Youth Court did not properly investigate the question of finances and we have received from Mr Baglin some further information about the appellant's finances which, again, we have considered. It is clear that the Magistrate expected that the car would be sold and there would be a reasonable sum from the refund of insurance premium to enable the fine to be paid. That is clearly not going to be the case, the car is currently on offer at £300 but has not yet been sold and so that offer figure is one which we have to look at with a degree of scepticism because we do not know if that sum will actually be raised. Furthermore the insurance refund does not appear to be very significant and amounts only to £64. In the circumstances we think the right course is to indicate that the appellant can have 10 months to pay the fine which has been imposed. We think the fine should be paid at the rate of £60 per month because that was the amount which was going to be paid towards the insurance of the car, as Mr Baglin has told us. We emphasise that if there is a difficulty in making those monthly payments it is the appellant's job to go back to the Viscount and to ensure that it is raised with the Court, the question of a further extension of time to pay the fine which has been imposed, because if the fine is not paid then there is the default sentence of 2 weeks' youth detention which would be in place. So if there is a problem in paying that fine it is down to the appellant to make sure that it is raised with the Court and the Viscount's office. 8. It was said by Mr Baglin that the appellant gives great assistance to his mother and is not in work or full time education. The mitigation put before the Youth Court was that he is not a bad lad. This Court is not for one moment suggesting that he is a bad lad, but this was a very serious offence which was committed. Driving whilst drunk, even down the back roads and maybe especially down the back roads of the Island where people might be walking their dogs and might not be expecting cars to come, the damage that could be done to members of the public is just as bad whether one is 17 or 60 and the period of disqualification reflects that there is an element of public protection in that; that is why the sentence appears to us to fall within the parameters of what the court below could reasonably have imposed. So for those reasons, subject to the time to pay, the appeal fails. No Authorities

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