

JERSEY / JUDGMENT

Cooper -v- AG [2013]

JRC 085A (07 May 2013)

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JUDGMENT

THE DEPUTY BAILIFF: 1. On 25 th January, 2010, the appellant was convicted of three offences, an offence of driving with excess alcohol, an offence of dangerous driving and an offence under Article 35 of the Children (Jersey) Law 2002 . She was sentenced on the driving with excess alcohol to 5 months' imprisonment, and on the count of dangerous driving to 6 months' imprisonment and disqualified from driving for 5 years. On the third count under Article 35 of the Children's Law she was sentenced to 1 month's imprisonment, each of those sentences was to run concurrently. The appellant appeals against conviction in relation to the Children's Law offence and sentence in relation to all three offences. 2. As far as the appeal is concerned she is substantially out of time in entering appeal. During the course of argument we adjourned briefly so that the appellant could consider further the appeal against conviction and when we returned she indicated that she wished to withdraw that appeal and we gave her leave to do so and the conviction therefore on the offence under Article 35 of the Children's Law stands. In passing we note that the record of previous convictions which is in the court bundle shows that the appellant has a conviction under Article 9 of the Children's (Jersey) Law 1969 and the summary is cruelty to neglect of children under 16. That record is clearly incorrect and we would ask the Crown to draw the police authorities attention to the fact that it is incorrect in the hope that it is corrected. 3. The circumstances which gave rise to the offence of driving with excess alcohol and driving dangerously are as follows. On 6 th December, 2009, police officers were investigating a matter at the lower end of Green Street, they heard a vehicle travelling towards them at some speed, there was a screeching of brakes and the vehicle came into view and stopped with its front off-side wheel on the pavement on the wrong side of the road. It was about 50 yards away from the officers who ran to the vehicle. The appellant stepped out, it was clear she was intoxicated, she was only able to mumble, her speech was slurred, she could hardly stand up, and she had to grab hold of things to stand up. She said to the officers "Take me away, I'm steaming". She became abusive towards them. Subsequently the level of alcohol in her system was analysed at 150 micrograms of alcohol in 100 millilitres of breath. 4. The evidence also was that immediately prior to that members of the public had seen her driving round the roundabout at the far end of the tunnel, she had been going too fast, she had lost traction, there is dispute as to whether she mounted the kerb or not but, in any event, she came very close to one or more pedestrians,

certainly there is reference to a young boy who was very frightened, and indeed the consequences of her driving could have been very serious indeed and her driving was such that there could have been another family's happiness destroyed as a result of her actions on that occasion. 5. The first issue we have to decide is whether or not to give the appellant leave to appeal out of time. She entered a notice of appeal in August 2010 seeking leave to appeal out of time but took no further steps in relation to that application. She entered a further application in the autumn of last year and it is that application which we now deal with today. In support the appellant has put before us an amount of material both from her general practitioner and from the Health and Social Services Department showing that there were psychological reasons why she might not have been able to give the question of an appeal full attention at the relevant time. The Court is prepared to accept that material and to give leave to the appellant to appeal out of time and so we go onto deal with the substance of the appeal. 6. Although initially the appellant indicated that she considered that the sentence of custody was wrong in principle, it is clear that it has long since been served and she did not maintain that before us. So really what one is concerned with is the question of the disqualification period of 5 years. The circumstances in that respect are that the appellant has a previous conviction for drinking and driving which took place in the United Kingdom, the strict rules under the Road Traffic (Jersey) Law 1956 do not apply but it seems to us that the Magistrate was perfectly entitled to take into account the fact of that previous conviction when deciding on the period of disqualification. What the Magistrate actually said when she came to pass sentence was this :- "I have listened very carefully to every word your Advocate has said on your behalf. I believe your Advocate has put your case very well indeed and said everything that could possibly be said. Nevertheless I have to look at the seriousness of this case and I treat it very seriously indeed. Your breath alcohol level was 150, the legal limit is 35. The manner of your driving was very dangerous indeed and it put members of the public at a thoroughly unacceptable risk. You very narrowly avoided an accident, two members of the public were so concerned about it, in fact three, but two of them approached the police immediately and told the police, one of them was already on her telephone to the police. People who drink to excess and choose to get into vehicles and then drive and put themselves and other members of the public at risk in the way you did can expect prison and I have to pass a sentence of imprisonment today. Miss Cooper, for the drink driving itself, I bear in mind this is your second drink driving offence, although the first one was not in Jersey, it is still an offence of an identical nature and you were disqualified for two years on your first drink driving offence. You should have learned from that, you should have also learned from the Alcohol and Drug Service in the help they offered you in 2007." And so that was the background to the Magistrate imposing a disqualification period of 5 years. 7. The appellant can only succeed in the application today if she can show that the sentence was wrong in principle or manifestly excessive in all the circumstances of the case. We think it is absolutely plain that the sentence was not wrong in principle. A disqualification period for a second offence of driving with excess alcohol is entirely appropriate and there is no doubt at all that a disqualification here was correct. So we are only concerned with whether or not it was manifestly excessive. In that context the Court entirely accepts that the appellant, with her two young children, struggles without the benefit of a licence. We realise that it is difficult to do basic things as the appellant put it to us, to get shopping or if a

child is ill during the night and there are activities which she cannot easily do with the children as a result of not having a licence. Nonetheless that has to be balanced as no doubt the Magistrate had to balance it with the driving that took place in December 2009 and the risk to the public and the fact that another family's life could have been destroyed and in the circumstances we do not think that the disqualification can possibly be said to be manifestly excessive and so the appeal against sentence in relation to the two driving charges fails and is dismissed. 8. On the neglect of the child, I call it neglect, the offence under Article 35 of the Children's (Jersey) Law 2002 we note the Magistrate said this:- "I accept from what your Advocate has said and what the Advocate for the Prosecution have said that this was reckless and not intentional, and that you did phone the police yourself and that to some degree took some responsibility in contacting the police when you felt unable to cope.... If it weren't for other matters I would have been minded to deal with that by way of a non-custodial sentence" 9. Now it is clear the Magistrate did not blame the police for charging the appellant in relation to this charge. But the facts were that it was the appellant who telephoned the police to say she could not cope and the Court is not sure at all that the right prosecution decision was taken by the police in bringing this matter before the Magistrate's Court. It seems to us that it would be a very sad thing if members of the public who could not cope with their children and telephone the police just to indicate that inability to cope found as a result that they were prosecuted and that indeed that might if they were able to reach that conclusion in advance that might lead them to not calling for help when in fact they needed it. And we hope that those remarks might be taken into account as a matter of policy by the police in the future when case files are put before the Centenier with a suggestion that a charge should be brought. Obviously there will be circumstances on the facts when it would be right to bring a charge, we are not convinced on what we have seen here that it was right but we realise that we have not seen all the material that was before the Magistrate. Nonetheless it is these considerations which lead us to hesitate about the sentence of 1 month's imprisonment even though it runs concurrently in relation to this charge. We understand and accept the point the appellant has made to us that the conviction is there on the record and the conviction shows a sentence of 1 month's imprisonment. 10. We think the right way of dealing with this given that the Magistrate herself was looking for a non-custodial sentence, that the right of dealing with this on the facts of this case would have been to have imposed a fine with a custodial sentence in default and so what we propose to do is to set aside the sentence of 1 month's imprisonment and impose instead a fine of £400 or 1 month's imprisonment for non-payment and there is no time to pay, it is as it were a fine that takes place as of the conviction date and so as it runs concurrently the sentence has already been served and the effect of it is that there is no further penalty for this appellant but the record will show a £400 fine or 1 month in lieu and Advocate O'Donnell we ask you to make sure the police correct the record in any event. Authorities Children (Jersey) Law 2002. Children's (Jersey) Law 1969. Road Traffic (Jersey) Law 1956. Page Last Updated: 17 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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