

JERSEY / JUDGMENT

Fisher -v- AG [2013] JRC 221 (12 November 2013)

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JUDGMENT

THE BAILIFF: 1. This is an appeal against a sentence of 3 months' disqualification from driving imposed on the appellant by the Relief Magistrate, Advocate Boxall, on 25 th September for two offences of driving a motor vehicle whilst holding a telephone, contrary to Article 50(1) of the Road Traffic (Jersey) Law 1956 . 2. The facts are very simple and appear from the summary given by the Centenier in the Magistrate's Court. At 6pm on Saturday 10 th August the appellant was seen by a police officer driving a white Hyundai van down Bath Street towards Beresford Street holding a mobile phone to his right ear. He was stopped and the police officer explained what she had seen, to which the appellant replied "It's a new phone and I've not got my hands free kit yet". Only 12 days later on 22 nd August at 7am the appellant was seen driving the same van down Cattle Street by another police officer, with a mobile phone to his right ear. Again, he was stopped by the officer and he replied "Yeah I know, I haven't got my hands free yet", he went on to say "I've been stopped recently for this, you're usually at Bath Street." 3. The appellant's record was produced at the hearing before the Relief Magistrate. This showed that the appellant had four previous convictions for a similar offence of driving whilst holding a phone, for which he had been fined of sums varying between £100-200 between October 2002 and May 2006. He also had two appearances for a similar offence at the Parish Hall, one in September 2002 but one as recently as March 2012, and on each occasion he was also fined. He has therefore breached the law concerning driving with mobile phones on some six separate occasions prior to these offences, albeit that only four resulted in a conviction before the Magistrate's Court. 4. The Magistrate's Court Guidelines for offences of driving whilst holding a phone suggests a fine of between £100-150 with no disqualification for a first offence; a fine of £150-200 with no disqualification for a second offence; a fine of £200 plus, with consideration of up to 3 months' disqualification for a third offence, and increasing fines and disqualification of up to 6 months for subsequent offences. 5. In relation to financial hardship the Guidelines say this:- "Where disqualification is indicated, discretion is retained in cases of serious financial hardship to move a case down in seriousness for that purpose only. This will often lead to a shorter period of disqualification rather than no disqualification. However, this should only be allowed once in a 3 year period and should be noted on the criminal record." 6. When he appeared before the Magistrate's Court the appellant was unrepresented. The Relief Magistrate asked him whether he

wished to say anything and the appellant explained that he was a painter and decorator who worked for his uncle, who was the owner of the company for whom he worked. The Relief Magistrate then said this:- "MAGISTRATE: Anything else you want to tell me? DEFENDANT: Yes Sir, there is Sir. MAGISTRATE: Alright I'll be a little moment, thank you." The Relief Magistrate then went on to look at the previous record of the appellant before moving straight on to say that the previous penalties did not appear to have had the proper effect, so he was going to impose a period of disqualification for 3 months. 7. The Relief Magistrate did not in fact refer back to the appellant to hear the comments which the appellant had said he wished to make. Advocate Pearmain submits that the appellant did not have the opportunity to explain how he needed his licence for his work. He did do this immediately after the Relief Magistrate had announced the disqualification, because he explained at that stage that his job involved driving and running sites and he was a supervisor and needed transport. However the Relief Magistrate considered that it was too late at that stage; he had made his decision and referred only to the possibility of appeal. 8. We have to say that it appears to us that Advocate Pearmain's point on this aspect is well made. The appellant did say that he had more to say but the Relief Magistrate, unfortunately, was distracted by looking at the previous convictions and it appears that he forgot to come back to the appellant to hear what the appellant had to say before imposing the disqualification. So we accept that there was a procedural flaw in the proceedings. But we think the right way to deal with this is to consider the matter afresh ourselves, as opposed to applying the usual test on an appeal, namely whether the sentence was manifestly excessive. So as we say, we will start again and decide what we think is the right sentence. 9. We have received a letter from the appellant's employer. As we have already said, this is the uncle for whom the appellant has worked since he came to the Island which is, we are told, some 16 years. The uncle explains in the letter that the appellant is a decorator/foreman and is required to drive and deliver personnel to sites. The appellant was disqualified from 25 th September until 18 th October at which time the license was returned to him temporarily pending the hearing of this appeal. The letter explains that during that period the uncle had to employ someone temporarily to do the appellant's driving duties and as a result the uncle dropped the appellant's wages by £100 per week, from £400 per week to £300 per week. The letter goes on to say that, if the appeal is unsuccessful, the uncle will have no alternative but to let the appellant go. We have to say we find that slightly surprising given the length of time the appellant has worked for his uncle, the regard in which we are told he is held, the fact that he can still work as a decorator, albeit not as a foreman or supervisor delivering people and, of course, the blood relationship. Nevertheless we note that the appellant may suffer financial hardship as a result of the disqualification and we take that into account as envisaged in the Magistrate's Court Guidelines . 10. As against that, first one has to bear in mind that this appellant has committed this offence six times, including one as recently as 2012, prior to these offences and has now committed the same offence a further two times. Secondly, the second offence on this occasion was committed after he had been caught in relation to the first offence only some 12 days later, so he clearly had not been put off in any way from using a phone when driving by the fact that he knew he was likely to be charged in relation to the first offence and had been seen by the police. These are significant matters. Thirdly, the guidelines suggest disqualification for a third offence of up to 3 months and disqualification up to 6 months for

fourth and subsequent offences. Given the number of occasions that this appellant has committed this offence there was clearly a case for a longer disqualification than 3 months. 11. In our judgment this appellant has shown a blatant disregard for the law in this area. He has to learn that there are consequences to repeated breaches of the law. In our judgment there is a strong case for thinking that a disqualification for longer than 3 months would have been appropriate because these were respectively his seventh and eighth offences. Nevertheless, we consider that we should make some allowance for the financial hardship which he may suffer and in all the circumstances we think that, whereas we might otherwise have imposed a longer disqualification, the fair disqualification in this case is one of 3 months. So, as we say, we have reached this matter afresh but, nevertheless, we think that 3 months is the right level of disqualification here and therefore we dismiss the appeal. 12. As a postscript we should add that the appellant can consider himself very fortunate so far as the fine is concerned. Although there were two offences committed on completely separate occasions, as we say, the second offence being committed in the knowledge that he had been caught for the first offence, the Relief Magistrate only imposed a fine of £250 in relation to the first offence. No fine was imposed for the second offence. It is not clear to us why this was so. In effect, given that the disqualification was concurrent and that there was no separate fine for the second offence, the appellant was completely unpunished for the second offence. We do not consider that that was the correct approach. 13. The disqualification, obviously, comes back into effect immediately. Authorities Road Traffic (Jersey) Law 1956. Magistrate's Court Guidelines. Page Last Updated: 17 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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