

JERSEY / JUDGMENT

Hansford v AG [2023]

JRC 150 (17 August 2023)

[2023] JRC 150

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[2023] JRC 150 [New search] [Help] Magistrate's Court Appeal - motoring - reasons for the decision [2023]JRC150 Royal Court (Samedi) 17 August 2023 Before : R. J. MacRae, Esq., Deputy Bailiff, and Jurats Hughes and Berry Connor Tyson Hansford -v- The Attorney General Advocate D. C. Robinson for the Appellant Advocate L. Sette for the Attorney General JUDGMENT ON APPEAL THE DEPUTY BAILIFF: 1. The Appellant appeals his conviction after a trial for failing to stop and report an accident on 6 May 2022 contrary to Article 52(7) of the Road Traffic (Jersey) Law 1956 . We announced our decision having heard the appeal on 31 July 2023 and now give our reasons for that decision. The Appellant was convicted after a trial by the Relief Magistrate. Article 52 of the Road Traffic (Jersey) Law 1956 ("the Law") provides: "52 Duty of driver of vehicle in case of accident (1) A driver of a vehicle must comply with paragraph (2), if owing to the presence of the vehicle on a road, an accident occurs involving any of the following - (a) personal injury to any person; (b) damage to - (i) another vehicle, or (ii) any other property (moveable or immovable) including land and anything constructed on, fixed to or growing on land; or (c) injury is caused to any horse, cattle, ass, mule, sheep, pig, goat or dog. (2) The driver of the vehicle must stop and, if required by any person having reasonable grounds for doing so, must give the following information - (a) the driver's name and address and, if different, the name and address of the owner of the vehicle; (b) the registration mark of the vehicle; and (c) whether, and the extent to which, there is in force in relation to the user of the vehicle a policy of insurance in respect of third party risks. (3) If, for any reason (including not being required by any person), the driver of the vehicle does not give the information referred to in paragraph (2)(a), the driver - (a) must immediately inform a police officer of the occurrence of the accident; and (b) must not move the vehicle without the consent of a police officer. ... (7) If a person fails to comply with paragraph (1) or (3), that person commits an offence and is liable to a fine and imprisonment for 6 months. ..." 2. Pursuant to this provision, a driver of a vehicle must stop and on the facts of this case as there was

no other person present at the scene, pursuant to sub-paragraph (3), must immediately inform a police officer of the occurrence of the accident and must not move the vehicle without the consent of a police officer. In this case, the Defendant said there was no obligation to do these things because not only was no person injured but there was no damage to any property. 3. The Crown said there was damage, albeit not much damage, to a hedge / grass bank. The matter was considered fairly and in detail by the Relief Magistrate who directed himself in accordance with the Law and the relevant legal principles. He concluded that damage was in fact caused to the hedge / grass bank and in those circumstances, the charge of failing to report an accident where damage had been caused had been proved. 4. The test we need to apply on appeal was set out in the case of *McAdam v AG* [2022] JRC 280 at paragraph 20: "The relevant test is that set out in *Graham v AG*

- [2013] JRC 014 , which is considered the appeal provisions in the Magistrate's Court (Jersey) Law 1949 which has been essentially replicated in the Criminal Procedure (Jersey) Law 2018 . The key passage is an extract from the decision in *Rushton v AG* (Royal Court October 16th 1989 Unreported) where the Court said: "The Court of course has on many occasions said that its duty in looking at an appeal on conviction from the Magistrate below is to examine the transcripts to see if there is evidence on which the Magistrate concerned could properly have come to the decision he did. If there was that evidence, then even though the Court might not necessarily come to the same decision, the Court does not likely interfere with it. The Court has to be satisfied that there was insufficient evidence [for] the Magistrate to have come to the decision he did, or that he drew the wrong conclusion and inferences from the evidence before him." 5. As recorded by the Relief Magistrate, most of the facts were not in dispute and were reduced to a set of agreed facts as follows: "(i) The Defendant was driving the Ford Transit van ("the Van") on Le Mont Fallu in the Parish of St Peter at approximately 10pm on 6th May 2022. (ii) Whilst driving the Van the Defendant failed to take the right-hand bend in the road, resulting in the Van colliding with a grass bank (the "Collision"). (iii) The Police were called as a result of an anonymous call made by a member of the public and on arrival they found the Van with the passenger door open and no-one at the scene. The keys to the Van were not found inside the Van. (iv) Police officers took photographs of the Scene and at approximately 11.45 pm a recovery truck attended to remove the Van from the site of the Collision.
- (v) The Defendant was arrested at his home address at approximately 5.45am on the following day, 7th May 2022, by PC Jones. Following the Defendant's arrest, the only key to the Van was found on a hook inside the front door of the Defendant's address and was seized by Police Officers. (vi) At 6.30pm on 7th May 2022 the Defendant was interviewed by PC Penberthy and answered "no comment" to all material questions, including the question of who was driving the Van at the time of the Collision. (vii) Following the interview, the Defendant attended the charging desk, where PC Penberthy handed a notice to the Defendant (the "Notice") and the Notice became an agreed exhibit in the trial. (viii) On 14 July 2022 Advocate Robinson, on behalf of the Defendant, wrote separately to the Police and the prosecution confirming that

having taken instructions from the Defendant earlier that afternoon, the Defendant was in fact the driver of the Van at the time of the Collision. 6. The central question before the Relief Magistrate was whether or not there was " damage " to the hedge / grass bank. The fact that the Appellant's van was badly damaged was not relevant per se to this question. 7. The Relief Magistrate correctly identified the evidence relevant to this issue and we extract the relevant paragraphs of his judgment: "11 There were two prosecution witnesses the first was PC Farrington who was the Police Officer who attended at the scene of the collision and he was called to give live evidence and the second was Mr Wayne Le Marquand whose evidence was agreed by the defence and became an Article 9 witness statement. Mr Le Marquand is the owner of the grass bank into which the Van crashed. PC Farrington confirmed that he attended at the site of the Collision and there was no-one present and that he noted the van had collided with the bank and the bonnet of the van had been pushed back and dented. He stated that the van had gone into the bank to a distance of approximately 5cm. He confirmed that there was dirt, grass and hedgerow which had come away from the bank and various bits had fallen down from the bank. In cross examination it was noted that the Police officer had made two statements and the first statement he had made no mention of any damage to the bank although he stated that he had been asked subsequently to making his first statement by the case preparer to make a second statement as to whether he had noted any damage at all which he did. Mr Le Marquand made a statement confirming that he was the owner of the property where the Collision took place and that he had been contacted late on the 6th May 2022 by one of his employees informing him that there had been accident on the road outside the property. He had been informed that a van had been abandoned within the works entrance and he then called the Police to ask if the van would be removed. He subsequently discovered that the Police had in fact moved the Van during the night. He observed the grass bank for himself and noted that it had a bump and that some grass had been removed but he considered it insignificant and gave no further thought to the incident. He was subsequently asked by the Police to make a statement confirming that damage had been caused to his property but he refused to do so at the time because he was not concerned about the small amount of grass that appeared to have been removed, no repair work was necessary, and no inconvenience had been caused to him or his business as a result of the incident." 8. Although this summary is an accurate one, it is necessary in the circumstances of this case to have regard to the transcript itself of the evidence given at trial. In relation to what he saw at the scene, PC Farrington said the following: "The van had collided with the bank. I could see that the front bumper, the front of the van, had been pushed back and the van was in the bank." 9. He was asked: "How far into the bank would you say the van had gone in a distance of centimetres?" He answered: "Say, probably a couple of inches or about 5 centimetres - enough to push the bonnet of the van back into itself". 10. He went on to say: "Once the van had been moved from the recovery truck there was a lot of kind of dirt which had come away from the wall, some plants - which was mainly grass - and some kind of hedgerow". 11. He was asked what the effect on the bank had been and he said: "It was quite clear there had been some kind of collision. There was not enough for it to come down, but there were just bits that were falling from the bank". 12. When he

was cross-examined, he accepted that in his first statement he had not mentioned any damage to the bank at all. He was asked: "I think your evidence today is that there was a displacement of mud, and I think you also said that there were some plants that had been moved, is that right?". PC Farrington replied: "That's what I could see, yes." He confirmed that he did not see any damage to crops or planted flowers. 13. Also in evidence was a statement of Mr Le Marquand and it was partly covered by evidence and read in part by counsel. He was the owner of the land and in his statement he said that after the accident: "I observed for myself that the grass bank had a bump and that some grass had been moved. I considered this insignificant and so gave no further thought to the incident". 14. He was later contacted by the States of Jersey Police and asked to make a statement confirming that damage had been caused to his property. His statement said: "I refused to do so because at the time I was not concerned about the small amount of grass that appeared to have been moved, no repair work was necessary and no inconvenience was caused to me or my business because of the incident". 15. The Relief Magistrate was referred to two authorities. The first was *R v Fiak*

[2005] EWCA Crim 2381 which was a decision of the English Court of Appeal dealing with an English statute namely the Criminal Damage Act 1971 which has no application in Jersey. Nonetheless, the word " damage " was considered in the

judgment.

In that case, the Appellant whilst in a cell at a police station, placed his blanket down the lavatory, flushed it repeatedly, causing his own cell, two adjoining cells and the passage to become flooded. The blanket was wet and the water caused flooding, although the water was clean and fell onto a waterproof cell floor. The blanket was unusable until it was cleaned and dry, and the cells were cleaned by a contract cleaner before they became available for normal use. 16. It was argued on behalf of the Appellant that neither the blanket nor the cells were damaged. The blanket would have been reusable when dry and cleaning up a wet cell floor did not constitute damage to the cell itself. It was said that however widely interpreted " damage " may be for the purpose of the Criminal Damage Act 1971, " a wet blanket and a wet cell floor fall outside any sensible definition ". 17. In paragraphs 18-20, the Court of Appeal said this: "18. In the 1971 Act, hardly surprisingly, the word "damage" itself is not further defined. The Concise Oxford Dictionary explains damage as "harm or injury impairing the value or usefulness of something ...". We need refer to only two authorities. The first is *Morphitis v Salmon* [1990] Crim LR 48 , where the transcript of Auld J's judgment reads: "The authorities show that the term "damage" for the purpose of this provision, should be widely interpreted so as to conclude not only permanent or temporary physical harm, but also permanent or temporary impairment of value or usefulness."

19. This analysis was approved in *R v Whiteley* [1991] 93 CAR 25 where, after a comprehensive examination of the authorities, Lord Lane CJ summarised their effect. "Any alteration to the physical nature of the property concerned may amount to damage within the meaning of

the section. Whether it does so or not will depend on the effect that the alteration has had upon the legitimate operator (who for convenience may be referred to as the owner) ... where ... the interference ... amounts to an impairment of the value or usefulness of the [property] to the owner, then the necessary damage is established."

20. Applying these principles to the present case, while it is true that the effect of the appellant's actions in relation to the blanket and the cell were both remediable, the simple reality is that the blanket could not be used as a blanket by any other prisoner until it had been dried out (and, we believe, also cleaned) and the flooded cells remained out of action until the water was cleared. In our judgment it is clear that both sustained damage for the purposes of the 1971 Act. There plainly was a case to answer." 18. The appeal was dismissed. 19. The only relevant Jersey authority is that of AG v Freeman

[1994] JLR 29 , a decision of Magistrate Sowden. This decision considered the meaning of " damage " in the conduct of the customary law charge of " malicious damage ". 20. The Magistrate said at [1994] JLR 32 at line 20: "This is a court of summary jurisdiction where, unlike the Royal Court, the judge does not have the assistance of prosecuting counsel and her or his qualified staff to research and argue points of law raised by the defence. Drawing on my knowledge and experience, my preliminary conclusions, after hearing both sets of submissions, were that the Jersey law material to both charges was not as counsel had submitted and that to do justice I should, and did, reserve judgment to enable me to undertake some limited research. Having undertaken as much research as can be justified by a court of summary jurisdiction and for the reasons I will later give, I find against the submissions made on behalf of Mr. Freeman and applying what I believe to be the Jersey common law to the evidence, I hold that he is guilty of both offences. Before sentencing, I request the benefit of a full background report from the Probation Service. However, I would encourage an appeal so that the Royal Court can, with further research and assistance from the Law Officers' Department, declare with more authority than can this court exactly what in Jersey constitutes the criminal offence of causing malicious damage and its boundaries on the one hand and what in Jersey constitutes the criminal offence of acting in a manner likely to cause a breach of the peace and its boundaries on the other." 21. This case does not involve the customary law offence of malicious damage and it is unnecessary for this Court to set the boundaries of that offence on this appeal. We are solely concerned with " damage " for the purposes of Article 52. However, in relation to " damage " the Magistrate said at page 10 of the judgment at line 40: "Damage" must not be taken to mean that there must always be financial loss, nor that the property must always be of some value, nor that any trouble to which the owner is put will suffice. Fundamentally, the test must be a commonsense matter of degree in which the de minimis principle figures prominently. An example of what would be de minimis is if a person poured a few drops of water on the seat of the Magistrate's car which he was able in a trice to wipe away with his handkerchief; the trouble to which the Magistrate had been put would be too trifling to worry about. Not so if a person let all the air out of the tyres of the Magistrate's car or scratched it with an instrument. Subject then to the de minimis

principle, there is damage where a person meddles with the property in such a way that it is destroyed or lost or permanently damaged or damaged with the result that it reasonably requires repair, whether this costs the owner, or the person responsible for the property, money or labour; or in such a way that its use is permanently or temporarily interfered with, whether this happens because a constituent part is displaced, removed or broken. In Mr. Freeman's case the damage to the door was not de minimis and had to be rectified by others, who charged £41.50 for their labour." 22. We have had regard to various dictionary definitions but we are content to adopt the approach taken by Magistrate Sowden in AG v Freeman . The Magistrate, or Jurats or jury (as the case may be) will need to consider whether there has been damage to property or anything fixed to or growing on land in accordance with the statute and, as Magistrate Sowden said, " fundamentally, the test must be a common sense matter of degree in which the de minimis principle figures prominently" . 23. In this case, the Relief Magistrate took what at first blush seemed to be a pragmatic approach to ascertaining whether or not there had been "damage". He made the following findings: "27 The Court was provided with photographs which were taken very shortly after the collision. It is quite clear from these photographs that the Van collided with the hedgerow at significant force and this is obvious from the damage to the bonnet of the Van where the Court can see from the photographs that were provided that the van is severely damaged and indeed the bonnet of the Van is very seriously dented and bent. This leads the Court to the inevitable conclusion that the Van hit the hedgerow with such force that some damage must have been caused as a result of the Collision. The mere fact that the owner of the land is not inconvenienced by this damage cannot lead to the conclusion that no damage at all was caused." 24. It was this key finding that led the Relief Magistrate to conclude that damage was in fact caused to the hedgerow. Although the Relief Magistrate directed himself correctly on the law, the Jurats were satisfied that there was insufficient evidence for the Relief Magistrate to come to the decision that he did on the evidence before him. The Relief Magistrate was focusing on the damage to the Appellant's vehicle and owing to the severe damage occasioned to that he, in his words "drew the inevitable conclusion" that " some damage must have been caused to the hedge / bank ". However if a glass hammer was to be struck with force against a wall, the hammer would smash and a wall would most likely remain undamaged. A cup could be thrown onto a marble floor - the cup might shatter but the floor would be unaffected. The focus of the Court needs to be on the bank / hedge and the damage caused to the Appellant's van is not relevant, in the view of the Jurats. Looking at the evidence of the landowner, Mr Le Marquand, and of PC Farrington this was truly a case of the damage being de minimis - to the extent that the criminal law is not engaged. The Jurats were not satisfied that the bank / hedge was damaged in accordance with Article 52. Accordingly, the conviction was quashed and the appeal allowed. 25. We now turn to the appeal against sentence. When the Appellant was sentenced by the Magistrate on 7 June 2023, he was dealt with for three matters

- offences committed on three separate occasions. First, the offence of failing to stop and report an accident on 6 May 2022; secondly, holding a mobile telephone whilst driving on 31 May 2022 and finally, failing to provide a specimen of breath at the police station without reasonable excuse on 4 December 2022. 26. There was no separate penalty imposed for the second offence so we are not concerned with that. In relation to the May 2022 offence, the Appellant was sentenced to 18 weeks imprisonment and disqualified from driving for a period of 18 months; and in relation to the December 2022 offence, he was sentenced to 30 weeks imprisonment consecutive and a concurrent disqualification from driving for a period of 42 months. The 18 weeks sentence now falls away with the quashing of his conviction. 27. The Appellant avers that the sentences imposed on him were manifestly excessive and/or wrong in principle, which is agreed to be the test on appeal. The Royal Court will not intervene unless either of the sentences are found to be manifestly excessive and/or wrong in principle. 28. There were four grounds of appeal. The third and fourth can be taken shortly as they are of insufficient merit to detain the court. The third ground of appeal is that the Court disregarded the conclusions set out in the pre-sentence report and failed to have proper regard to the Appellant's suitability for a non-custodial sentence. A Probation Officer's recommendation is just that - a recommendation. Although we are not saying that there are no such circumstances in which a failure to follow or have proper regard to such a recommendation would amount to an arguable ground of appeal, this is certainly not such a case. The Court, particularly having regard to the fact that these matters were contested, was entitled especially in relation to the second offence to pass a custodial sentence in any event. The fourth ground of appeal is that the Court failed to have sufficient regard for the Appellant's personal mitigation. Beyond an Appellant's guilty plea (there was none in this case) which must always be given credit, although the extent to which credit is attracted will depend upon the stage and circumstances of the entry of the guilty plea, the weight given to personal mitigation will always be a matter for the discretion of the Court and it would be extremely unlikely that a Court would intervene on appeal and say that the weight given to such mitigation by the lower court was not appropriate. 29. Accordingly, the Court is concerned with the first and second grounds of appeal; namely that in relation to the offence of failing to stop and report an accident, the Court imposed a sentence on the basis of material that had not been tested in evidence and/or excluded from the trial resulting in the Magistrate failing to place the offending in the correct sentencing bracket and consequently imposing a sentence which was unjust and disproportionate. There was some merit in that argument but there is no reason for that matter to be explored as the conviction in relation to that offence has been quashed. In relation to the offence of failing without reasonable excuse to provide a specimen of breath when required to do so contrary to Article 30(7) of the Law, the Appellant contends that the sentence imposed was manifestly excessive and that the Magistrate placed the offence in the wrong sentencing bracket. 30. As to the offence of failing to provide a specimen of breath at the police station, the Magistrate saw the evidence at trial, viewed the relevant footage and was entitled to hold that this was not a case where the Appellant had an honestly held but unreasonable excuse for failing to provide a specimen. Her categorisation of the case pursuant to the relevant Magistrate's

Court guidelines cannot, in our view, be criticised. The Magistrate said: "On the fail to provide a specimen, I sat on the trial. This was not a case in my view where you had an honestly held but unreasonable excuse. As was pointed out, you could blow into this machine and you were given many times - you were given an opportunity to do so. Sometimes you blew and then stopped blowing. Other times you said you couldn't do it because you were in pain but I didn't accept that because the doctor very clearly said, it's a bit like having a tooth ache, if you can't eat on one side you eat on the other and you had a cut lip and if you can't blow on one side you blow on the other, and I do not believe that was an honestly held but unreasonable excuse. In my view this falls into Band C of the sentencing guidelines. This was a deliberate refusal where evidence of moderate level of impairment was present because the doctor said that although you weren't hopelessly drunk you were certainly drunk, because he'd seen you and we had that evidence from the doctor at the time, as well as any observations we saw from the CCTV. So if you had pleaded guilty your starting point for sentencing would have been 5 months and without that credit for a guilty plea your sentence will be 7½ months on that matter." 31. However, the Magistrate at the outset of her sentencing remarks made it clear that she was influenced in the sentence that she was about to impose by the May 2022 offence of failing to stop. She said at the outset of her remarks " This is a series of offences involving driving and involving drinking, committed within a period of a few months and you showed no remorse, you pleaded not guilty in both cases and you were convicted in both cases." 32. As we have found, the Appellant was entitled to plead not guilty in relation to the first matter and his conviction has been quashed. The contention that he advances had we refused his appeal against conviction that he should not have been sentenced on the basis that he was by the Magistrate, we can put to one side. The Magistrate went on to find that the period of disqualification in relation to the failing to provide a specimen offence had to be increased because of the failing to stop offence. 33. In the circumstances, it was necessary for us to revisit the sentence and sentence the Appellant afresh in relation to this matter, as we were unsure of how the Magistrate would have treated this offence had it stood alone - although we were certain that she would have imposed a lesser period of disqualification. 34. We had some regard to the Magistrate's Court guidelines although they are not binding on the Royal Court. We had regard to the Appellant's previous convictions. He is 33 years old and had never previously received a custodial sentence. Although he committed a number of serious offences in his early 20s, including offences of assault and dishonesty for which he was sentenced to community service, he has kept out of trouble for most of the last 7 years and has usually been in work. Of most relevance in his antecedents was his conviction in May 2022 for careless driving and failing to stop and report an accident - in total he was fined £1,500 for those two offences. We had regard to the contents of the pre-sentence report which in some respects made encouraging reading. The maximum sentence for this offence is 12 months imprisonment. 35. In the circumstances, we were satisfied that this offence was so serious that only a custodial sentence could be justified. We imposed a sentence of 6 months imprisonment, a period of disqualification from driving of 30 months, and ordered that the Appellant be re-tested prior to the return of his driving licence. Authorities Road

Traffic (Jersey) Law 1956. McAdam v AG

[2022] JRC 280 R v Fiak

[2005] EWCA Crim 2381 . AG v Freeman

[1994] JLR 29 . Page Last Updated: 04 Sep 2023 Back to top About JLIB Accessibility Contacts
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