

JERSEY / JUDGMENT

Hobson -v- AG [2018] JRC 065B (27 March 2018)

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JUDGMENT

THE commissioner: 1. This is an appeal against the sentence imposed upon the appellant, a serving police officer, by the Assistant Magistrate on 18 th January, 2018, for the offence of careless driving, to which he had pleaded guilty. 2. The brief facts are that on 27 th July, 2016, at around 01:27 hours in the morning, the appellant and his colleague, P. C. Zach Walker, responded to a "Code 1" call to go to the assistance of two female police officers and a sergeant who were in the location of the Havana Club, and who had four people around them. One man was resisting arrest and a fight could start at any time. 3. A Code 1 call requires and authorises an emergency response and is governed by a States of Jersey Police Policy ("the Policy"). Quoting from the agreed basis of plea:- "If urgent assistance is required all available officers "drop everything" and respond in view of the risk to personal safety, particularly of police personnel." 4. The appellant and his colleague were the only unit available to respond at this time, the only other officers present at Police Headquarters being in the custody suite and an inspector. 5. The appellant started the drive from a point on Rouge Bouillon, travelling to Beresford Street via Midvale Road, David Place and Bath Street. The careless driving took place at the David Place/Stopford Road junction, which is controlled by traffic lights. The appellant crossed the stop line on David Place when the lights controlling his direction of travel were on red. He had his blue lights flashing but his siren was not sounding. Whilst crossing the junction, the appellant's police car collided with a mini being driven by Tobias Young, who was likely to have passed the stop line governing his direction of travel when those lights were on green. 6. The appellant had crossed the preceding junction with Val Plaisant in the appropriate manner (where he did sound his siren), increasing his speed considerably and then starting to reduce his speed again by applying the footbrake in anticipation of negotiating the Stopford Road junction. 7. The data recorder fitted to the police vehicle was found not to be operating correctly, and it was not possible, therefore, to say to the criminal standard the exact speed of the vehicle at the time of the collection. However, the experts estimated the speed of the police vehicle as between 15.8 and 26.8 mph. It was accepted that despite these difficulties in accurately identifying the speed of the police vehicle, if the appellant had braked one or two seconds longer, that is had applied his brakes one or two seconds earlier, he would have made a considerable reduction in his speed of between 11 and 22 mph respectively, such that the possibility of a collision would have been reduced. 8. PC Walker

estimated the appellant's speed at between 10 and 15 mph. The evidence of Tobias Young was not available, but he described the speed of his mini to an officer after the accident at "no more than 28 mph", close to the speed limit for that road. 9. The agreed basis of plea concluded in the following terms:- "24 In general terms, [the appellant] did not exercise adequate caution when approaching the junction. Specifically, [the appellant] failed to drive sufficiently carefully by a. failing to reduce his speed to a level appropriate to safely cross the Stopford Road junction, despite knowing that the sight lines at this junction were significantly restricted in relation to Stopford Road due to the presence of the building occupied by Barros' Tropical Bistro; b. not positioning his vehicle on the right hand side of the road which would have given him a better line of sight; c. crossing the junction against the red light controlling his direction of travel; d. crossing the junction at such speed that he was unable to avoid a collision with a car driven by a member of the public." 10. No injury was caused to Tobias Young or to any other member of the public but the vehicles and a traffic light were damaged. 11. Whilst there is an exemption for police officers to exceed the speed limit (Article 21(6) of the Road Traffic (Jersey) Law 1956 ("the Road Traffic Law")), there is no exemption in relation to traffic lights. However, the Policy permits police officers to drive through red lights. Quoting from paragraph 8.2:- "8.2 The vehicle speed where passing through areas controlled by red traffic signals must not put any other road users in danger; the suggested maximum speed should not exceed 15 mph with 1st or 2nd gear normally being engaged on vehicles fitted with a manual gearbox. Automatic gearboxes will select the most appropriate gear in relation to the speed and degree of acceleration applied." 12. There is no definition of careless driving in the Road Traffic Law, but it is driving which falls below the standard which is to be expected of a competent and careful driver (see *Scott v AG*

[2016] JRC 087 at paragraph 8). Dangerous driving, by contrast, is defined under Article 24 as driving which falls "far below what would be expected of a competent and careful driver; and it would be obvious to a competent and careful driver that driving in that way would be dangerous." The distinction between the two is one of degree. 13. Under Article 25(2) of the Road Traffic Law, the offence of careless driving is punishable by a fine of Level 3 on the standard scale (up to £10,000). There is no mandatory disqualification, but under Article 14(1), the Court may order a person convicted of careless driving to be disqualified for holding a licence for such period as the Court thinks fit. Furthermore, under Article 35(1), where the Court disqualifies a person for holding a licence for a fixed period of time, it is required to make an order disqualifying the person for holding a licence until he has, since the end of that fixed period, passed the driving test. Findings of the Assistant Magistrate 14. The Assistant Magistrate applied the Magistrate's Court Guidelines ("the Guidelines"). The section of the Guidelines dealing with careless driving firstly identifies the starting point, secondly considers the effect of aggravating and mitigating factors and thirdly, considers factors indicating a greater degree of harm, before arriving at a preliminary view of the appropriate sentence, to which mitigation is then applied, and possible endorsement or disqualification considered. 15. The starting points are based on a first-time offender pleading guilty (the position of the appellant), and there are three bands, with examples of the nature of the activity. Examples for band A are "momentary

lapse of concentration or misjudgement at low speed", for which there is a starting point of £1,000, a range of £700 to £1,300 and no disqualification or endorsement. The examples for band B are "loss of control due to speed, mishandling or insufficient attention to road conditions, or careless turning right across on-coming traffic", for which the starting point is £1,600, with a range of £1,300 to £1,900, and for disqualification or endorsement to be considered. The examples for band C are "overtaking manoeuvre at speed, resulting in collision of vehicles or driving bordering on dangerous", for which the starting point is £2,200 with a range of £1,900 to £2,500, and a disqualification of between one and six months. 16. The Assistant Magistrate found that the appellant's driving fell within band C. Quoting from the transcripts:- "In my view, it falls into Band C because of the excessive speed leading to the accident. Clearly, had [the appellant] either not driven so fast in David Place or had started decelerating quicker, then, at the time that he came to the junction, he would have been able to have been at the speed where he could have made a proper assessment of the risks prior to entering into the junction and then the accident would have been avoided. Aside from the question of speed, none of the aggravating factors in the Guidelines is present. The starting point for a sentence in Band C is a fine of £2,200. In the circumstances, I see no reason to depart from that starting point. Therefore, there will be a fine of £2,200 and, in default of payment, [the appellant] will face six weeks' imprisonment. Clearly, Miss Brown, I will allow time to pay that. The offence permits the Court to endorse a driver's licence or to disqualify a defendant from driving. The guidelines suggest a disqualification of one to six months. If a member of the public had found themselves in this situation, I have no doubt that they would face a disqualification towards the top end of that band. Evidently, [the appellant's] driving at the time was for a legitimate purpose and it wasn't for - I'm trying to think of the right word - he was driving seriously, but nevertheless did not drive sufficiently carefully and, therefore, whilst I feel I am obliged to disqualify him from driving, it should not be for as great a period as would otherwise be the case. Accordingly, there will be a disqualification for three months." 17. Accordingly the appellant was fined £2200, disqualified from driving for three months and required to retake the driving test. Test on appeal 18. The test on appeal was articulated by the Court in the case of *Loureiro v AG*

[2015] JRC 154, in which at paragraph 9 the Court said:- "It is well established that the Court will not interfere with the sentence imposed by the Magistrate unless it was one which is not justified by law, or the sentence was passed on the wrong factual basis, or some matter has been improperly taken into account or left out of account, or there was some fresh matter which ought to have been taken into account or whether the sentence was wrong in principle and manifestly excessive. In particular, it is not the function of the Royal Court to tinker with sentences which are within the range open to the sentencing court simply because it might itself have fixed a lower term of imprisonment." 19. We were informed by Advocate Brown that at the pre-Court meeting, she had produced a bundle of authorities on "special reasons", and asked whether the Assistant Magistrate wished to hear from the appellant in person, in support of a special reasons argument. The Assistant Magistrate

apparently stated that he did not wish to hear from the appellant on special reasons, because his sentencing decision on disqualification was a discretionary exercise. The transcripts show that at the sentencing hearing Advocate Brown made no express reference to those authorities, other than to say this:- "Sir, for all those reasons, I submit that the correct outcome in this case is that my client should certainly not receive a disqualification and have his licence endorsed. There is a line in these cases, in relation to whether or not there should be some sort of special treatment of emergency responders, because they are doing their job and for the public policy reasons required, as long as they do their very best and have not fallen into serious error and there hasn't been serious injury, that the correct outcome should in fact be unconditional discharges. Sir, I say no more than that. It is clearly a difficult position for the Court. It is equally difficult for Police Officers responding in difficult circumstances." Grounds of appeal 20. The grounds of appeal advanced by Advocate Brown were as follows:- (i) The sentence was manifestly excessive or wrong in principle. (ii) The Magistrate erred in holding that evidence on the totality of the driving was not relevant to the offence. (iii) The Magistrate attached too much weight to the issue of speed when the experts agreed this could not safely be identified. (iv) The Magistrate erred in failing to give due weight to the evidence relating to the driving of the other driver, Tobias Young. (v) The Magistrate erred in failing to sentence in a proportionate manner, namely consistent with previous relevant cases. (vi) The Magistrate failed to give appropriate weight to the Appellant's good character, early guilty plea and general mitigation relating to the offence. (vii) The Magistrate erred in refusing to hear an argument as to special reasons for not imposing a disqualification. 21. The argument in relation to consistency related to a sentence imposed on Police Officer Quemard on 25 th July, 2017, for careless driving. Advocate Brown, who was at that hearing before the Assistant Magistrate, informed us that the driving by that officer, who was also responding to an incident, took place during rush hour, when the roads were busy and there were pedestrians present. As we understand the facts from Advocate Brown, Police Officer Quemard overtook traffic, accelerated to beyond the speed limit, and came into collision with another police car, also responding to the same incident (whose driver she was representing), causing damage to both vehicles and minor injuries to herself. Her driving was found to be within band C, and she was fined £2,000 and disqualified for one month, with a requirement to re-take the test. Advocate Brown contended that the driving of the appellant was less culpable than that of Police Officer Quemard. 22. Whilst we had a copy of the transcript of the sentencing hearing in Quemard , we were cautious about taking the sentence imposed in that case into account, as no clear statement of the facts emerged from the transcript, and, in any event, for the reasons set out below, it was unnecessary for us to do so. 23. We do not think it fair to assert that the Assistant Magistrate refused to hear arguments on special reasons, as the transcript shows no such refusal. The Assistant Magistrate is strictly correct in saying that special reasons only apply to offences where a disqualification is mandatory, such as the offence of dangerous driving (Article 22(5)) or driving under the influence of drink (Article 27(5)). However, as we say below, we do think that the case law in relation to special

reasons is relevant to mitigation in this case. 24. In essence, Advocate Robinson, for the Attorney General, defended the sentence imposed on the basis that the Assistant Magistrate's finding that it came within band C of the Guidelines could not be faulted. In his view, the Assistant Magistrate regarded the driving of the appellant as "bordering on the dangerous", a finding which he says was supported by the facts. The fine and the disqualification came firmly within the band of sentences set out in the Guidelines, and as such, could not be described as either manifestly excessive or wrong in principle. Indeed, the period of disqualification had been reduced to reflect the fact that the appellant was responding to a Code 1 call. Decision 25. In the view of the Court, the appellant's driving came within Band A or between Band A and Band B, which would have resulted in a lower fine and no disqualification, and this on the basis that his driving constituted a momentary lapse in concentration or a misjudgement at a speed which was too high for that junction although not, in the light of the evidence on speed, "excessive", resulting in a collision from which there were no injuries. 26. However, placing driving within a particular band is an exercise in which different judges may reach different but equally reasonable views. We were also conscious that it is an exercise undertaken in the Magistrate's Court on a daily basis, and we would be reluctant to seek to interfere in the sentence on that basis alone. In our view, whether Band A or C applies, the resulting sentence imposed by the Assistant Magistrate was manifestly excessive. 27. Our finding in this respect is informed by the case law relating to special reasons for not imposing an otherwise mandatory disqualification. 28. The four minimum criteria required to be present to amount to a "special reason" is set out in the case of *Whittal v Kirby*

[1946] 1 All E. R. 552 refined in *R v Wickens*

[1958] 42 Cr. App. R. 236, (cited with approval in *AG v R*

[2016] JRC 196). A matter must:- (a) be a mitigating or extenuating circumstance; (b) not amount in law to a defence to the charge; (c) be directly connected with the commission of the offence; and (d) be one which the court ought properly to take into consideration when imposing sentence. 29. In *R v Lundt Smith*

[1964] 2 QB 167, the defendant had pleaded guilty to causing death by dangerous driving. He was driving an ambulance, carrying a patient in premature labour. He had been exhorted to hurry. He approached a junction at 40 miles per hour and went through the red traffic lights. His blue light was flashing and the ambulance bell sounding. As he went across the junction, he collided with a motor scooter, killing the rider. The defendant had no previous convictions. Finding that he was driving in the course of his duty and had been told that the baby's life and that of the mother depended on the speed at which he could get the mother to hospital, the Court found that it would be "very wrong" in the circumstances of the case if he was prevented from earning his living by driving motor vehicles. The Court decided that he should not be punished at all, and he was discharged unconditionally, with no order for disqualification. 30. The appellant in the case before us was not faced with an emergency quite at that level, and a disqualification would not result

in the loss of his employment as a police officer, but Lundt Smith was a case of dangerous driving, in which a person had been killed, and the Court found that the defendant should not be punished at all. 31. The case of Robert John O'Toole

[1971] 55 Cr. App. R. 206 Div B involved another ambulance driver driving on a straight road, which was clear on his side, at 50-60 mph against the speed limit of 40 mph. He had his blue lights flashing, his headlights on and the siren sounding. A driver emerged from a garage to his left, because she was given the opportunity of crossing over to join the queue of cars opposite in what the Court of Appeal described as "a disastrous piece of driving" which resulted in a collision with the ambulance in which no one was injured. The driver of the ambulance was convicted of dangerous driving after a summing up described by the Court of Appeal as "heavily weighted against him", fined and disqualified for twelve months. Sachs LJ said this at page 210:- "Each case naturally falls to be determined on its own facts and of course nothing in this judgment is intended to suggest that driving which is careless or reckless can in any circumstances be condoned by the courts. On the other hand it is for courts when imposing sentences in cases such as the present one to recognise that balance which must be maintained in the interests of the public between the essential element of not unnecessarily impeding the answering of the calls of humanity in emergencies and that of not involving road users in unnecessary risks. Great care has to be applied in determining on which side of the line a case falls. The tensions under which drivers of ambulances and fire engines have to work must not be overlooked and it is within the knowledge of the court from other cases that any imposition of ill-judged penalties naturally tends, in detriment of the public interest, to cause unrest in the services on which everyone depends for rescue. The order of disqualification was an imposition which was ill-judged in this particular case, which involved at highest a fractional error of judgment. It is indeed the view of each member of this Court that there should be no disqualification here. Moreover the court has come to the conclusion that this is one of those cases in which there should have been an absolute discharge." 32. These observations apply equally, in our view, to police officers responding to an urgent call, and succinctly set out the balance, when imposing sentences, between maintaining the interests of the public in having ambulances, fire engines and police officers attend as quickly as possible and not involving other road users in unnecessary risk. 33. In *Woods v Richards*

[1977] Crim. L. R. 295, a police officer was driving on a motorway and, responding to an emergency call (about the nature of which there was no evidence), drove on the hard shoulder, colliding, when his view was obstructed, with a stationary lorry. He was convicted of careless driving, but special reasons were found for not endorsing his licence. The appeal was concerned essentially with whether the same standard of care should be applied to a police officer proceeding to an emergency as would be required of a civilian driver. The Divisional Court said it was impossible to say that a special standard should be applied in the case of a police officer -- "The test must be: what is due care and attention in all the circumstances of the case". However, Eveleigh J went on to say this:- "One feels,

naturally, considerable sympathy with a police officer driving in the situation in which the defendant found himself. It is one that must occur frequently. However, that sympathy does not enable one to re-write the Road Traffic Act 1972 and it is best expressed, as was done by the justices in this case, when the Court comes to consider the penalty to be imposed, or indeed whether a penalty should be imposed at all." 34. Thus, as to whether the appellant is guilty of careless driving, he has to be judged by the same standards that apply to all other drivers and, indeed, the appellant has accepted that by pleading guilty to careless driving. However, sympathy for the predicament in which a police officer responding to an urgent call finds himself is to be expressed in the sentence to be imposed and indeed, whether there should be any penalty at all. 35. Special reasons have also been applied to emergency responders in Scotland in the cases of *Husband v Russell*

[1997] 1998 S. L. T. 379 and *Watt Murphy*

[2016] SAC (Crim) 16. In the latter case, the police officer had crossed a junction against a red light with the blue flight flashing but no siren, colliding with other vehicles. She pleaded guilty to dangerous driving, and was disqualified for driving for the mandatory period of twelve months. The report is not clear as to whether she was fined in addition. The disqualification was set aside on appeal. Quoting from the opinion of the Court at paragraph 20:- "[20] On the factual matrix presented to the court and in light of the observations set out in the various authorities we have reached the conclusion that the sheriff's approach to the matter cannot be supported. For our part, we are satisfied that the appellant would probably not have entered the junction in the face of a red light were it not for the emergency nature of the mission she was undertaking. In other words, the extenuating circumstances generated by the emergency were, to our mind, unquestionably connected to the commission of the offence. Whilst the appellant did, indeed, plead guilty to a charge of driving dangerously, it was a momentary failing on the part of the appellant which created that offence. It may have been unfortunate that the appellant overlooked to activate the vehicle's siren but in driving as she did she had in mind the safety of other road users; she activated the vehicle's blue lights and significantly reduced the speed of the vehicle. Against that background, it is, in our opinion, eminently open to this court to determine that special reasons ought to have been held established by the sheriff. That being so, we have quashed the disqualification imposed at first instance." 36. The facts of that case are similar to those involving the appellant, although it would seem that her speed through the junction may have been lower than that of the appellant. 37. In our view, if special reasons justify no disqualification in more serious cases where disqualification is otherwise mandatory, such as dangerous driving, then they equally justify, if not more so, no disqualification in less serious offences such as careless driving where disqualification is discretionary. 38. The sole reason for the appellant driving was that he was responding to a Code 1 call in a situation in which colleagues needed urgent assistance. He would not have crossed that junction against a red light but for that call, an extenuating circumstance unquestionably connected to the commission of the offence, to be taken into account in sentencing in terms of the penalty to be imposed. 39. The

appellant has been driving for 12 years and has been a police officer with the States of Jersey Police since 2013. He has no previous convictions of any kind and no endorsements on his licence. He was acting in the course of his duty, responding to an urgent call, and yet received a fine of £2,200, in the middle of the range set out in the Guidelines for band C, which he has paid personally. 40. It would seem from the remarks of the Assistant Magistrate that it was only the disqualification period that was reduced from what other motorists would have received, so the appellant has been fined at the same level as other motorists would for this offence of careless driving; a fine which appears to take no account at all of the extenuating circumstances and which in our view is manifestly excessive. 41. We do not think that this is a case where no penalty at all should be imposed, because the appellant should have slowed down more and should have sounded his siren, but we consider a much lower fine of £700 to be appropriate for this first offence, taking into account the extenuating circumstances. 42. There was some discussion at the hearing as to whether disqualification is imposed both for the purpose of protecting the public and by way of punishment, but Advocate Robinson was clear, and we accept, that it simply constitutes a further punishment. 43. We find it difficult to understand why that additional punishment was imposed upon the appellant in these extenuating circumstances. In order to be a police response driver, you have to be trained, and we had a note explaining the nature of that training comprising a three week course, covering the theory and practice of advanced driving, road response training and a final assessment. The appellant was trained and assessed, successfully, in October 2015. Response drivers are re-assessed annually and the appellant was last re-assessed on 13 th January, 2017. Whilst he has not lost his employment as a consequence of the disqualification, driving is what he is currently trained and employed to do and, as a consequence, there is currently one less response driver available to the States of Jersey Police. 44. Preventing the appellant from doing the police work for which he is currently employed, and for which he is trained, seems to us excessive in these extenuating circumstances. Added to that is the requirement for the appellant, qualified in driving well beyond the level required for the driving test, to re-take the driving test before he can resume his driving duties with the States of Jersey Police. In our view, there should have been no disqualification at all. 45. This is not to say that police response officers and other drivers for the emergency services can drive without regard for the safety of other road users. As it says at paragraph 1.9 of the Policy:- "1.9 Police drivers need to be aware that risks cannot be justified by telling themselves that they are taken in a noble cause. The overriding responsibility in any situation is to drive safely. The objective should be to arrive as quickly as is safely possible." 46. The appellant did drive carelessly through that junction, causing a collision, and now has a conviction for careless driving on his record, and will pay a not unsubstantial fine, but he was driving in the course of his duties as a police officer, responding to an urgent call, and these extenuating circumstances were not sufficiently weighed in the balance when the sentence was imposed upon him. 47. In summary, we allow the appeal and set aside the fine of £2,200 and the disqualification from driving for a period of three months and in lieu impose a fine of £700 or seven weeks' imprisonment in

default. Authorities Road Traffic (Jersey) Law 1956. Scott v AG

[2016] JRC 087 . Loureiro v AG

[2015] JRC 154 . Whittal v Kirby [1946] 1 All E. R. 552. R v Wickens [1958] 42 Cr. App. R. 236. AG v R

[2016] JRC 196 . R v Lundt Smith [1964] 2 QB 167. Robert John O'Toole [1971] 55 Cr. App. R. 206 Div B. Woods v Richards [1977] Crim. L. R. 295. Husband v Russell [1997] 1998 S. L. T. 379. Watt Murphy [2016] SAC (Crim) 16. Page Last Updated: 13 Apr 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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