

JERSEY / JUDGMENT

Lagadu -v- AG [2013]

JRC 076 (17 April 2013)

[2013] JRC 076

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JUDGMENT

THE DEPUTY BAILIFF: 1. The appellant appeals under Article 17(1)(b) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 ("the 1949 Law") against his conviction on 22 nd October, 2012, of causing or permitting a vehicle registration number J9898 to wait on a prohibited area, namely La Chasse in St Helier. The appellant was fined £70 with a default sentence of 12 days' imprisonment and he was given one week in which to pay the fine. 2. His Notice of Appeal was dated 22 nd October, 2012. The appellant contended that the summons to appear in the Magistrate's Court had been incorrectly served on him, a third party, thus preventing the registered keeper/owner of the motor vehicle from exercising its right to defend the alleged infraction, and as a result the appellant had been wrongly convicted. 3. At the hearing before the Relief Magistrate on 22 nd October, 2012, the appellant denied the vehicle was registered to him, and declined to identify to whom the vehicle belonged, citing the Data Protection (Jersey) Law 2005 . He was asked whether the company Panic Services Limited, which was identified on the summons, was in any way related to him, and he confirmed that it was, but he would not expand upon the nature of the relationship, simply stating that he had been summoned to Court in his personal capacity. 4. There was no dispute that the vehicle in question had been parked on a yellow line in La Chasse as stated in the charge. The Relief Magistrate showed the appellant a photograph which clearly indicated the vehicle was parked there. The issue raised by the appellant was that he was not responsible for this vehicle as he was not the registered owner. He argued that if the vehicle did not have the driver present, the parking ticket should be the responsibility of the registered owner. 5. In the course of the submissions which the appellant was making to the Magistrate, he was asked whether he accepted, as a matter of fact, that he had parked the vehicle on the yellow line in La Chasse on the day alleged. In answer to that direct question, the appellant accepted that he had parked the vehicle there on that date. However he sought to qualify that by saying that he did not take responsibility for the vehicle and the registered owner should have the opportunity of taking responsibility for it. He also asserted that his only intention was to pick up documents from an address in La Chasse and that this was no different from a Jersey Post van stopping to deliver mail or freight. 6. The Relief Magistrate entered a conviction upon the grounds that the appellant had admitted parking the vehicle on the yellow line, and in those circumstances there was no liability to be imposed on the registered

owner. 7. On the day on which the appeal was listed for hearing, the appellant applied for an adjournment. He passed up a medical certificate indicating that he had recently had an operation. He was asked to address the Court on why this prevented him from dealing with his appeal. It was clear from the way in which he addressed the Court that he was perfectly able to deal with the appeal notwithstanding his operation. His application for an adjournment was therefore refused. 8. Unfortunately the appellant had not brought his papers with him. A duplicate set was provided to him, and we adjourned briefly so that he could marshal his arguments. 9. When the appellant presented his appeal he made these submissions to us:- (i) A Parking Control Officer had told him that there was a zero tolerance policy in relation to parking offences in La Chasse. Subsequently, a different Parking Control Officer has said there was no such policy. The appellant referred to one of the photographs which was in the Court bundle and which demonstrated a car parked in La Chasse, and claimed that it was unfair that the proceedings should have been commenced against him. (ii) He had only been sitting in the vehicle in question warming it up for some 10 minutes, and left it unattended for approximately 5 minutes. He had gone into a building to collect documents which were there and taken a comfort break. (iii) A parking attendant had publicly called him a villain. This was insulting. The parking attendant was less than professional. (iv) His main submission was that the company Panic Services Limited was the owner of the vehicle and should have been the defendant. When he attended the Parish Hall enquiry, he did so as secretary of the company, which was the registered keeper/owner of the vehicle. From that point when the Centenier proceeded with a charge against him despite the fact that he was not the owner of the vehicle, everything went wrong. The company should have had the opportunity to accept or deny the charge. 10. As to the first of these points, the charge against the appellant was causing or permitting a vehicle to wait on a road specified under the relevant order as being a prohibited area. It is not necessary for the prosecution to show that everyone who has caused or permitted a vehicle to wait in a prohibited area has been prosecuted. The fact that one parking attendant claims that a zero tolerance policy exists, which another parking attendant denies, is neither here nor there. The Court has to deal with the facts alleged against a particular defendant to ascertain whether those facts show to the requisite standard that the criminal offence had been committed, the burden being on the prosecution. 11. As to the appellant's second argument, the relevant provision of the Road Traffic (St Helier) (Jersey) Order 1996 is in these terms:- "6 Prohibition of waiting and stopping (1) A vehicle shall not - (a) wait on a road specified in the first and second columns of Schedule 4; ... (6) The expression "waiting" in this Article does not include the stopping of a vehicle to set down or pick up passengers." 12. There is no argument that the vehicle was parked in a prohibited area. It is clear from a review of the order that a vehicle which has been left unattended for about 5 minutes while the driver collects documents and takes a comfort break is not a vehicle which has stopped to pick up or set down passengers. In those circumstances, the vehicle, if not parked, is waiting. 13. As to the third argument, we have not seen any evidence as to the conduct of the parking attendant. All we have had are the submissions made by the appellant as to what was or was not said to him by the attendant. Indeed, no Court has had the opportunity of seeing the attendant give evidence and considering what he or she had to say when cross-examined. We expressly make no finding as to whether the attendant was or was not insulting to the appellant.

Even assuming that the attendant was insulting however, that would not provide any defence to the charge. It would, as the appellant contended, not be professional behaviour by the attendant to be rude to a member of the public and it might give rise to enquiry from or training by his or her employer, but it would not supply to that member of the public any defence. 14. We now come to the main submission which was made. 15. We have already referred to the relevant provision of the Road Traffic (St Helier) (Jersey) Order 1996 . The relevant piece of primary legislation which underpins this order is the Road Traffic (Jersey) Law 1956 ("the 1956 Law"). Article 62 of that Law in its material provisions lays down as follows:- "(1) Subject to the provisions of this Article, where, as regards any road, it appears to the Minister after consultation with the Connétable of the Parish in which the road is situated it is expedient to do so - ... the Minister may make Orders prohibiting, restricting or regulating the use of the road or any part of the width thereof by vehicular traffic... and either at all times or at times, on days or during periods so specified... ... (iii) prohibiting or restricting the waiting of vehicles... ... (4) Any person who uses a vehicle or causes or permits a vehicle to be used in contravention or any Order made under this Article shall be liable to a fine not exceeding £100." 16. Before the Relief Magistrate, the appellant agreed that he had parked the vehicle in question on the yellow line. Before us, the appellant confirmed that that was indeed what had happened. It is clear in the circumstances that the offence created by Article 62(4) of the 1956 Law was complete. There was no need to rely upon other provisions in the 1956 Law which could lead to the registered owner of the motor vehicle being responsible for the fine. 17. The appellant appears to have considered that he had found some rather smart legal technicality on which he might be acquitted, namely that the motor vehicle belonged to a company and not to him personally. He, the appellant, was, he said, not only the company secretary but also the owner of the company. He thought that it was appropriate to contend before us that the company should have the opportunity of disputing the charge, and that it was somehow not fair to the company to deprive it of taking responsibility. Although he contended that he was hard done by because he was prosecuted personally, he also wanted to be able to contend before a Court that the company was not responsible either. His submission was that the company wanted "to challenge the argumentation on the fine". 18. Judgment was reserved so that the Court could emphasise in a written judgment its intense displeasure at such meritless arguments being proposed for consideration - arguments which not only involved the expense of the Court sitting, but which took up valuable Court time so that other litigants could not come before the Court on as timely a basis as would otherwise be the position. In addition, prosecution costs have been incurred. In the case of *Vibert-v-AG*

[2012] JRC 181 , similarly meritless arguments were advanced by the appellant, albeit they were arguments of a different character from those advanced in this case. 19. Had arguments of the kind advanced in either case have been advanced by an advocate, the arguments would have been advanced, in our view, in breach of the advocate's oath of office as "denoué de tout droit". In the present case, the concept that a person who owns a car through a company is not responsible when he parks the car in a restricted area because the company, which by itself could not park the car or drive it anyway, was responsible, is absurd. Taking points of this kind shows no respect for the law, the Court or the Jersey

taxpayers who have to pick up the cost of dealing with this ridiculous objection. 20. The maximum fine for this offence was £100. On dismissing the appeal, we ordered the appellant to pay £200 towards the cost of the prosecution on the appeal. That sum of money was a considerable underestimate of the costs which were actually incurred. The reason for reserving the judgment in this case is to ensure that if there should be any future cases where points of this kind are taken, the greffier will have the ability to refer the appellant, when acting in person to the contents of this judgment because we wish to make it perfectly plain that in future cases where meritless points of this kind are advanced, the Court will actively consider an award of indemnity costs, the quantification of which will probably run into thousands rather than hundreds of pounds. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Data Protection (Jersey) Law 2005. Road Traffic (St Helier) (Jersey) Order 1996. Road Traffic (Jersey) Law 1956. Vibert-v-AG

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