

JERSEY / JUDGMENT

Le Lay -v- AG [2012] JRC 195 (24 October 2012)

[2012] JRC 195

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. The Court has spent time considering these various appeals against conviction and sentence. The appeals against conviction are in respect of a conviction for failing to provide a specimen, an assault on a police officer, and two assaults at Longbeach. 2. As far as the failure to provide a specimen is concerned, the evidence that was given before the Magistrate was that of a police officer, PC Penney, and also Dr Barrett. The test which the Court has to apply is whether there was evidence upon which the Magistrate could reasonably convict. In that context therefor in failing to provide a specimen the evidence from the police officer was this:- "Mr Le Lay had already played games with us in order to waste time. He clearly had an understanding of what was requested of him. Every now and again he would show us that he understood, he would confirm and clarify, ask questions and then he would start crying again. In our opinion it was to waste time. He was then offered a blood sample, he agreed to give a blood sample. Doctor Barrett came in we went into the Doctor's room with Mr Le Lay. We put him on the bed, he laid there freely. We explained to him what was going to happen, he understood. He agreed to have blood taken from him. We waited ten minutes, Doctor Barrett was explaining things to him and as soon as Doctor Barrett tried to put the needle anywhere near him, Mr Le Lay, he refused to, he just kept saying "give me more time I need two more minutes". Then he would tense his arms up, then we would have to restrain him. Doctor Barrett tried maybe three or four times, tried to get the needle near his arm, Mr Le Lay was deliberately delaying it." And then Doctor Barrett said this:- "Whenever I approach him Mr le Lay withdrew his arm so we didn't even get as far as swabbing the area where I was going to take the blood. We normally use a little swab to clean the skin then we pass the needle through that area but despite repeated attempts and explanations if he didn't provide a sample that he might have to answer further questions, he withdrew his arm and so avoided the possibility of taking blood." Later on Dr Barrett said:- "no I think it's fairly clear in my mind that this man withdrew consent from providing a sample of blood." 3. The ground of appeal really is that the police should have given evidence to the Magistrate of a bottle of Whiskey and two empty bottles seized from the defendant's home and these were not produced in evidence. Crown Advocate Pedley submits that this was not relevant to the charge. We agree with that it was not relevant to the charge, which was a charge of failing to provide a specimen, and therefore there was evidence on which the Magistrate could convict.

The appeal against conviction on this charge fails. 4. On the assault on the police officer, the evidence from the police officer was as follows: he was taking water to the defendant in his cell " I said to PC Moisan let's get the door open, get the mattress, give him his water, in and out, in and out as quick as we can." At that point he tried to push the door open, I explained "There's your water Shawn, we've done everything we need to", he then pushed on the door, I pushed him back in the cell and he swung a punch at me". The officer said "there was no contact it went literally past my nose." There was CCTV shown to the Magistrate as well and indeed the Magistrate summarised that and in the evidence where he said :-"The evidence of PC Penney supported in part by the CCTV footage is that you swung a punch at him and he dodged out of the way " and then he comes to give his decision he says "I have heard evidence from PC Penney, I have viewed CCTV footage and I am satisfied that beyond reasonable doubt that the assault took place albeit that there was no contact and no injury". So it is clear that a punch was swung, even though it failed to connect. That is sufficient as a matter of law to justify a conviction. There was evidence upon which the Magistrate could convict and the appeal against conviction on that charge is also dismissed. 5. In relation to the two assaults at Longbeach, the defendant pleaded guilty in the first place on 20 th August. He was then given leave to change that plea and pleaded not guilty on the same day. He then changed his plea on 4 th September back to guilty and he repeated that plea on 27 th September, and when he sought leave to appeal against conviction today, he also indicated in the course of his submissions to us - I just add at that point that he made some very sensible and fluent submissions to us and he put his case well, he agreed that he was guilty on both counts and his real complaint was the way in which the paperwork was handled and the police had carried out the investigation. These are not matters relevant to this appeal. So we are satisfied that the appeal on the Longbeach assaults conviction should also be dismissed. So the appeals against conviction all fail. 6. We then come to the appeals against sentence. I am going to deal first of all with the assaults. There are many who would think that the sentencing on the two assaults at Longbeach ought to have resulted in concurrent sentences. The Magistrate obviously took the view that the serious part of this was the assault on a lady who was going to defend her husband so although it all happened at much the same time, the way in which the Magistrate looked at this was that this was so seriously aggravating that it merited a consecutive sentence. Taken in the round the Court does not think that there was any injustice in that matter and the appeal against sentence in relation to the Longbeach assaults is therefore dismissed. We cannot say that the Magistrate was wrong in principle nor do we think that the sentences were manifestly excessive. When we say that the Magistrate was not wrong in principle, we accept that some people might take the view that a concurrent sentence would have been more appropriate, but in the round the Court thinks that no injustice here has taken place. 7. As far as the assault on the police officer is concerned, the Magistrate was well aware that no contact had taken place. He was also aware that there was no injury but he said it was a difficult situation and PC Penney was trying to help the defendant. The Court has a duty, he said, to protect police officers, prison officers and officers of court and the Court cannot say that a sentence of 3 weeks' imprisonment consecutively, was either wrong in principle or manifestly excessive and the appeal in that respect therefore is dismissed. 8. We have spent quite a long time however considering the appeal against sentence in relation to the failure to provide a specimen when requested. The

gravamen of this offence is that by failing to provide a specimen the Court is deprived of having information to judge at which end of the scale possible drunken driving might have been committed by the defendant. The failure to give a sample means the Court cannot assess the level of drunken driving. In this case however, the defendant had apparently been drinking at home and it was clear that the Magistrate accepted he had been drinking at home, and that being so, it would have been difficult to assess the level of drinking and driving in any event. We have also taken into account that in relation to custody the legislation makes it plain that the offence carries either a fine or a period of imprisonment and the case of AG-v-Vincent

[2007] JRC 132 shows that a non-custodial sentence can be applied. All the cases that have been put before us by the Crown where a custodial sentence has been imposed involve either cases of very bad driving or previous convictions for similar offences or both and in this case we have noted that there was no evidence of particularly bad driving other than the driving of a car into the wall but no evidence as for example in the case of AG-v-Wheadon

[2008] JRC 042 , of the public being put at risk. We also noted that there was no previous conviction here in relation to the serious offences of drinking and driving or failing to provide a specimen under the Road Traffic (Jersey) Law 1956 . 9. In the circumstances we think that the custodial sentence was wrong in principle in this case on this charge and we think that the right sentence should have been a fine. The level of fine which we think was right would be £1,000 and in default of payment then 3 months' imprisonment would be served. The 3 months would of course be consecutive to the other sentences which have been imposed. 10. As far as disqualification is concerned, we have taken into account all the circumstances, we think that a mandatory disqualification of 12 months' imprisonment under the Law had to be imposed. Having regard to all the circumstances of the case we do consider that the sentence of 24 months' disqualification was manifestly excessive and we are going to reduce it to 12 months. 11. So the result of that is that the appeal against sentence succeeds in relation to the road traffic offence and for that offence what is substituted is a fine of £1,000 or 3 months' imprisonment, consecutive if it is not paid, and disqualification from holding a licence for 12 months and of course the customary test must be taken once that 12 month period has expired. 12. Mr Le Lay, you must pay the fine at the rate of £20 per week starting from 2 weeks after your release from prison and if you do not pay then you will be liable to 3 months' imprisonment. Authorities AG-v-Vincent

[2007] JRC 132 . AG-v-Wheadon

[2008] JRC 042 . Road Traffic (Jersey) Law 1956. Page Last Updated: 13 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2012/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/le-lay-v-ag-2012-jrc-195-24-october-2012>

Prepared on 27 October 2026 · Esheria