

JERSEY / JUDGMENT

McCarrick v The Attorney General

COURT

ROYAL COURT

BEFORE

F.C. Hamon, Esq., O.B.E., Commissioner, and

Jurats Quérée and Bullen.

Steven Oliver McCarrick

-v-

The Attorney General

Magistrate's Court Appeal.

Appeal against

conviction and sentence on 17th July, 2001, following a guilty plea to:

1 count of:

Riding a motorcycle dangerously, contrary to

Article 14 of the Road Traffic (Jersey) Law, 1956.

Appeal against conviction allowed; remanded to Magistrate's

Court for re-trial before a different Judge.

Advocate C. Yates on behalf of the Attorney

General.

Advocate R. Tremoceiro for the Appellant.

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ROYAL COURT

(Samedi Division)

15th October 2001

Before:

F.C. Hamon, Esq., O.B.E., Commissioner, and

Jurats Quérée and Bullen.

Steven Oliver McCarrick

-v-

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Advocate C. Yates on behalf of the Attorney

General.

Advocate R. Tremoceiro for the Appellant.

JUDGMENT

THE COMMISSIONER: 1. On 17th July, 2001, the appellant appeared in the Magistrate's Court charged with an infraction of Article 14 as construed by Article 14B of the Road Traffic (Jersey) Law, 1956 as amended. Article 14B reads as follows: "(1) For the purposes of Articles 14 and 14A of this Law, a person is to be regarded as driving dangerously if and, subject to paragraph (3) of this Article, only if -

- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
 - (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- (2) For the purposes of Article 14 of this Law in its application to a person riding an animal, paragraph (1) of this Article shall apply as if any reference to driving or to a driver were a reference to riding or to a rider.
- (3) For the purposes of Articles 14 and 14A of this Law, a person is also to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- (4) In paragraphs (1) and (3) of this Article, "dangerous" refers to danger either of injury to any person or serious damage to property and, in determining for the purposes of those paragraphs what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also any circumstance shown to have been within the knowledge of the accused." 2. The appellant pleaded guilty and was sentenced, after a short trial, to a fine of £400 and to a three month period of disqualification. 3. His grounds of appeal before us against conviction and sentence are: "I was unrepresented and I didn't understand the nature of the charge. The sentence was manifestly excessive and wrong in principle." 4. It is necessary for us, for the purposes of this appeal, to set out precisely the events that occurred at the opening of the trial and I will set them out in extenso: Centenier Letto: Reads charge. Judge Le Marquand: "Mr. McCarrick how do you plead?" The Defendant: "Guilty". Judge Le Marquand: "Plead guilty, ok, thank you. Would you sit, please, and I will hear the facts from the Centenier." Centenier Letto: "(indistinct) spoke briefly to an advocate and Mr. McCarrick tells me he couldn't afford one, but in the view of the severity of the charge, I wonder if you wish me to proceed?" Judge Le Marquand: "Well, I think the issue, the only issue being the issue of disqualification really, here, and in view of the record he's got. It is only an Article 14. I have to say I can ask the Probation Officer to speak to him about the effect of that. I wouldn't have thought it would be quite good use of the Probation Office to make enquiries of things like this which really provides me with a similar level of service." Centenier Letto: "Indeed, yes." Judge Le Marquand: "I was at a dinner last night in relation to human rights issues and it's quite clear in relation to matters that the human rights issues take an overview

as to whether the matter can be dealt with (indistinct) fairly, and I think (indistinct) access to a Probation Officer, who can then enquire as to the effect disqualification will have, etc. etc. I think then it's ok. So would you read the facts." 5. The guidelines make it perfectly clear that for a first offence there is a note considering custodial sentence, especially when serious injury is caused, but for this case the guideline suggests a fine of £500 and six months disqualification. For a second offence, a fine of £1,000 and twelve months disqualification. The sentence that was imposed in the light of AG-v-Kane (1965) JJ 501 is not unreasonable. In Kane the Royal Court said this: "The first and foremost consideration in deciding the appropriate sentence is the public interest, and one of the ways in which this interest is served is by imposing a sentence which will deter not only the person convicted, but also other persons, from committing offences of a similar nature. It would be a complete negation of this principle if it were to be held that a person who requires a driving licence for the purpose of his living is entitled to special consideration." These are serious offences that the appellant faced and the fact that he might have been likely to lose his licence would not have affected the Magistrate in any way. 6. We now have before us three affidavits from three witnesses, all connected with the appellant and there is an application by Mr. Tremoceiro as to whether these can be heard at this point. 7. In AG-v-Gorvel (1973) JJ 2503 the Court of Appeal provided three tests. The evidence would be admissible if the fresh evidence were not available at the original trial. The evidence must be relevant to the issue and it must be capable of belief. Those principles, of course, apply equally appropriately to Magistrate's Court appeals. Of course Barnes-v-AG (1987-88) JLR 669 allows the Court a discretion but that discretion should be regarded as being used in circumstances that are wholly exceptional. 8. We have no doubt, despite Mr. Tremoceiro's persuasive argument, that the application to adduce fresh evidence should not be permitted at this hearing. 9. However the matter goes further than that. Article 14 of the Magistrates Court (Miscellaneous Provisions) (Jersey) Law, 1949 gives the right of appeal. It says: "(1) A person convicted by the Magistrate's Court may appeal to the Royal Court -

- (a) if he pleaded guilty or admitted the facts, against his sentence.
- (b) if he did not -
- (i) and was sentenced by the Magistrate, against the conviction or sentence." 10. On the face of it this appeal against conviction is an impossible one. However there are grounds which would allow the Court to interfere with the conviction order of the lower Court. 11. The circumstances are set out in Article 14(1). The Royal Court can consider whether it can found jurisdiction where the accused did not appreciate the nature of the offence or where there are other grounds entitling the Court to do so. 12. We agree entirely with the Crown Advocate that it is not a necessity that the defendant should be legally represented. It is entirely up to each accused person to ask for assistance if he or she wants it. That is set out clearly in the case of Ashford-v-AG (5th December, 1994) Jersey Unreported. In a serious case it is accepted that legal representation would be desirable. Whether or not this is such a serious case as to come within that ambit is really not of primary concern for us because we

have concerns over the opening remarks as shown in the transcript. 13. If the learned Magistrate had put a simple question to the appellant in the form “Are you content to proceed without legal assistance?”, once the problem had been put to Judge Le Marquand by Centenier Letto then this appeal, though attractively argued by Mr. Tremoceiro, would not and could not have succeeded. We are concerned, however, that that question was not put to a man who was unrepresented. It is not a question of human rights legislation; it is a question, we believe, of basic fairness and equity towards the accused and we regard the circumstances as entirely exceptional. This does not mean of course that anybody who is aggrieved by a sentence that is given to him because he pleaded guilty and was unrepresented will be able to come to this Court and get permission as of right to go back to the lower Court. It is merely that, once Centenier Letto had put this question to the learned Magistrate, the appellant was not appropriately questioned. In those exceptional circumstances we will allow the appeal on conviction and we will remand the matter to the Magistrate’s Court, for the case to be heard de novo by another Magistrate. Authorities Barnes-v-AG (1987-88) JLR 669. Bish-v-AG (18th May, 1992) Jersey Unreported. Road Traffic (Jersey) Law 1956. Ashford-v-AG (5th December, 1994) Jersey Unreported. AG-v-Gorvel (1973) JJ 2503. Knapp-v-AG (17th September, 1991) Jersey Unreported. Whelan-v-AG (10th July, 2000) Jersey Unreported; [2000/129]. Pison-v-AG (16th August, 1999) Jersey Unreported; [1999/143]. R-v-Ball (1957) 35 Cr.App.R. 164. AG-v-Kane (1965) JJ 501. Magistrates Court (Miscellaneous Provisions) (Jersey) Law, 1949.

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