

JERSEY / JUDGMENT

Robbie John Colligny v The Attorney General

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ROYAL
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(Samedi Division)

19th January, 1998

Before: F.C. Hamon, Esq., Deputy Bailiff, and

Jurats Gruchy and Tibbo

Magistrate's Court Appeal

(D.E. Le Cornu, Esq., Relief Magistrate)

Robbie John Colligny

- v -

The Attorney General

On 10th

December, 1997, the Appellant pleaded guilty in the Magistrate's Court

to:

1

count of contravening

Article 2(1) (as amended) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, by permitting use of a motor vehicle on the road, whilst there was not in force in relation to the user of the vehicle a third party risks insurance policy.

A fine of

£250 or 7 days' imprisonment in default of payment, with 12

months' disqualification from driving was imposed. The period of disqualification suspended

pending appeal.

Appeal against

sentence of disqualification from driving.

Appeal allowed;

sentence of disqualification imposed as aforesaid quashed; sentence of 6 weeks' disqualification substituted.

Advocate P.S. Landick for
the Appellant.

Advocate A.J. Belhomme on
behalf of the Attorney General.

JUDGMENT

THE DEPUTY BAILIFF: Just after midnight on 22nd October, 1997, a car was stopped at Havre des Pas by police officers on mobile patrol. The car was being driven by a youth called Hilton, who was 19 and the passenger was the appellant, who was just 18 years old. When stopped Hilton gave his name as that of the appellant, the registered keeper of the motor vehicle, but that was in the words of the Centenier: "...a matter of panic and it was corrected almost immediately". As things transpired the driver was not insured to drive the vehicle. Hilton had believed that he was fit to drive, but tests showed that his sample was over the limit. When questioned, the appellant said that he was unsure whether Hilton was covered by insurance but did not think he was. Both young men were remorseful and co-operative. It may be that the appellant was unsure whether Hilton was covered by insurance but Hilton certainly should have known that he was not insured. In that regard his offence is the more culpable. Driving whilst under the influence and whilst uninsured will, in our view, not be covered by an insurance company and we cannot regard the remarks of Mr. Landick about the motor insurers bureaux in that respect as appropriate. However, Mr. Landick, in his submission to us, says that the Court should follow *R. -v- Cooper* [1983] RTR 183 CA, where the English Court of Appeal held that disqualification should be reserved for cases involving bad driving for persistent motoring offences or for cases involving use of a vehicle for the purposes of crime. The principle of that case was specifically not followed in the Royal Court appeal of *Angela Mercier, Mercier -v- AG* (1989) JLR N.10; (18th May, 1989) Jersey Unreported. We have reviewed that decision and we respectfully agree and endorse the Royal Court's decision. The facts in *Cooper* were that the appellant there was merely being driven in a motor vehicle taken without authority. He was not driving it and although he faced other offences he was 44 years old and had been a heavy goods vehicle driver for 20 years. Those facts do not lie with the facts of the present case. There is an absolute discretion given to the Magistrate under Article 8 of the First Schedule of the Road Traffic (Jersey) Law, 1956 for offences under Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, (as amended) as to the period of disqualification. However, the Magistrate issued guidelines in April, 1995, to his fellow Magistrates for driving without insurance offences and under the heading 'Penalty', a fine of £500 and disqualification for 12 months is suggested for a first offence and then there is a note that the Magistrates are to consider a custodial sentence. As it was, the Relief Magistrate ordered a substantial fine of £250. The Relief Magistrate was clearly as aware - as is this Court - of the offence of driving without insurance, particularly where the driver is above the permitted level of alcohol, but asked for no submissions regarding the necessity for everyday driving by the appellant. He was not bound to do so, but following *Reid -v- AG* (1994) JLR N.11; (21st March, 1994) Jersey Unreported, he might have allowed the appellant that opportunity. If he had done so he might have been influenced by the fact that the appellant is a fisherman and although he lives in the town area, he has, when he is working, to pick up one or two members of his crew obviously at unsociable hours. Looking at the case overall, we think that whilst disqualification is called for, the period of 12 months is too long for this offence on the facts of this case, and we allow the appeal to the extent that we are reducing the period of

disqualification to one of six weeks. Mr. Landick, you shall have your legal aid costs. Authorities Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (as amended): Article 2. Road Traffic (Jersey) Law, 1956 (as amended): Articles 8, 9, 10, Schedule 1. R -v- Cooper [1983] RTR 183 CA. AG -v- Mallon & Ors. (2nd August, 1996) Jersey Unreported. Mercier -v- AG (1980) JLR N.10; (18th May, 1989) Jersey Unreported. AG -v- Kane (1965) JJ 501. Reid -v- AG (1994) JLR N.11; (21st March, 1994) Jersey Unreported. Thomas' Principles of Sentencing (2nd Ed'n) pp.71-73. Archbold (1998 Ed'n): pp.499-500. Raikes -v- AG (1985-86) JLR N.25; (19th November, 1985) Jersey Unreported. Rayner -v- AG (1996) JLR N.16.

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