

JERSEY / JUDGMENT

# Santos v AG [2001] JRC 227 (12 November 2001)

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## JUDGMENT

THE BAILIFF: 1. This is an appeal by José Augusto Santos against his conviction by the Relief Magistrate on the 20 th August, 2001 of an infraction of Article A (1) of the Road Traffic (Jersey) Law, 1956 by driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit. There is no doubt that on the occasion in question the appellant had consumed a great deal of alcohol and was unfit to drive. He was found to have 82 micrograms in 100 millilitres of breath, whereas the prescribed limit is 35 micrograms. 2. The appellant's defence was, however, that the car was being driven by his wife and not by him. The uncontested evidence was that the appellant, his wife and son travelled into St. Helier in a left hand drive Renault motor car. The appellant and his son had been drinking in order to celebrate the birth of a baby to the son's girlfriend. The appellant's wife had not been drinking. The car came to a halt in Ingouville Place and was parked at an angle some three to four feet away from the curb. The keys were left in the ignition. The appellant made his way to a café in Charles Street while the appellant's wife went off to see about acquiring a cot and other items for the baby from a friend. This friend lived about five minutes' brisk walk away. The appellant's son had been dropped off nearby to see about renting a room. He returned to the café some fifteen minutes later, following which the police arrived to make enquiries about the car. The appellant was then arrested and taken to police headquarters. The appellant's wife arrived at the café shortly after and then made her way with her son and others to the police station. There, she asserted that she had been the driver of the car. 3. The principal evidence for the prosecution came from Mr. John Clark, who lives in Charles Street opposite the Charles Street store or café. His evidence was that he had ordered a take away meal from a Chinese restaurant on the corner of Charles Street and Ingouville Place and was standing outside waiting for it to be ready. He saw the Renault car pull up in Charles Street about three feet away from him, while the driver looked from left to right, apparently looking for somewhere to park. The car then turned into Ingouville Place and stopped three or four feet away from the curb at a distance of about fourteen feet from him. The driver got out from the left hand side and seemed to be staggering. Mr Clark collected his meal and when he came out of the restaurant he saw the driver leaning against the car apparently talking to someone in the passenger seat. Mr. Clark took his meal home and then came out into the street to see the driver staggering into the café opposite. 4. Mr. Clark's evidence was that the driver was

the appellant. He telephoned the police and Police Constable Ybert attended. P. C. Ybert's evidence was that as he was reversing into Ingouville Lane opposite the parked Renault he saw a male approach the driver's door on the left hand side as if to get into it, notice the police car, and then make his way back into Charles Street. P. C. Ybert's evidence was that this was the appellant, but the appellant denied having gone to the car in that way. P. C. Ybert went to the Charles Street café and approached the appellant to ask about the car. The appellant did not seem to understand, but the appellant's son approached P. C. Ybert and, in answer to a question, stated that his father was the driver of the car. That was the evidence which the Relief Magistrate clearly accepted and upon which he convicted the appellant. 5. The grounds of appeal are that the Relief Magistrate's decision was against the weight of the evidence, that he took into account irrelevant matters and failed to give due weight to relevant evidence. Counsel advanced a number of arguments in support of these grounds of appeal, but the most important arguments seemed to us to be these: First, the appellant's evidence that he had not been driving the car was supported by the evidence of his wife. Mrs. Santos gave unequivocal evidence that she had driven the car into St. Helier. She claimed that she had been under stress for a number of reasons and that was the reason why she had left the keys in the ignition. She agreed that the car had been parked badly, but she could give no real explanation for that. Counsel argued that it was significant that she had asserted that she was the driver of the car, before she had had the opportunity to concoct a story with the appellant. Even assuming this submission to be well founded, it ignores the possibility, however, that both the appellant and his wife had agreed with their son that this was the story which would be given. Secondly, the appellant's account was also supported by his son. His explanation for the evidence of P. C. Ybert was that he had misunderstood the question being put to him. It is true that the officer conceded that it was possible that there might have been a misunderstanding and it is also true that he made a note in his pocket book that the son's English was "not too good". Thirdly, counsel drew our attention, as indeed he did in his submissions before the Relief Magistrate, to the guidelines set out in *R -v- Turnbull*

(1977) 3 All ER 549 relating to identification. Those guidelines have been adopted in this jurisdiction in a number of cases. Counsel submitted that this was, in essence, a 'fleeting glimpse' type of case and that Mr. Clark's evidence was, accordingly, unreliable. 6. It is true that this was not a case of recognition, but the Magistrate did, nonetheless, ask himself all the relevant questions under the guidelines set out in *Turnbull*. We are satisfied, having reviewed all the evidence, that Mr. Clark had ample opportunity to watch the appellant, both as the car was parked and afterwards. Even if his description was flawed in one minor respect in that he did not notice the appellant's moustache, he did see a man and not a woman at the wheel of the car and later. 7. What is the test which we have to apply in considering the submissions which have been made to us? Mr. Yates, who appeared for the Attorney General, reminded us that the test was set out by this Court in *Little -v- AG* (12 th September 1994) Jersey Unreported; [1994/184] follows: The ground of appeal is that the learned Magistrate's decision was not one to which he could reasonably have come in the circumstances. The ground of appeal embodies the legal test for this Court. It is not for us to substitute our own view for the view arrived at by the Magistrate. The Magistrate saw

and heard the witnesses and he had the opportunity to observe their demeanour as they gave evidence before him. Our task is to examine the evidence in order to ascertain whether there was evidence upon which the Magistrate could reasonably rely in reaching the conclusion at which he arrived. 8. Applying that test, we think that the Relief Magistrate approached his task in the right way and, moreover, with care. He tested the evidence of the crucial witness, Mr. Clark, against all the criteria set out in *R -v- Turnbull* and he then accepted it. It is true that he did not specifically deal with the point raised by counsel for the appellant that there had been no opportunity for the appellant and his wife to concoct a story. It is clear, however, that there was a possibility for the story to have been concocted through the appellant's son and it follows, inexorably, from what the Magistrate's findings were that that is the view at which he must have arrived. 9. At the end of the day the Magistrate accepted the evidence of Mr. Clark and, in our judgment, he was entitled to do so and to reject such of the evidence as contradicted it. In our judgment, the decision at which the Magistrate arrived on the evidence before him was entirely reasonable. The appeal is accordingly dismissed. *Authorities Little -v- AG* (12 th September 1994) Jersey Unreported; [1994/184] Road Traffic (Jersey) Law 1956: Article 16A. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949: Article 14. Court of Appeal (Jersey) Law 1961: Article 25. *R -v- Turnbull* (1977) 3 All ER 549 CA. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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