

JERSEY / JUDGMENT

Scott -v- AG [2016] JRC 087 (20 April 2016)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal by Andrew Gordon Scott ("the Appellant") against the decision of the Magistrate of the 21 st January, 2016, in which she found the Appellant guilty of dangerous driving and sentenced him to a period of community service of 90 hours (the equivalent of a three month custodial sentence) and disqualified him from driving for a period of 12 months. He appeals against both conviction and sentence. He accepts that he was guilty of the less serious offence of careless driving. 2. The Court's jurisdiction on appeal from the Magistrate's Court is set out in Article 17 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 as follows:- "(1) person convicted by the Magistrate's Court may appeal to the Royal Court -

- (a) if the person pleaded guilty or admitted the facts, against the sentence;
- (b) if the person did not -
- (i) and was sentenced by the Magistrate, against the conviction or sentence, (ii) and was committed by the Magistrate for sentence under Article 4, against the conviction." 3. The Court's approach in considering an appeal against conviction is set out in the case of *Milho v AG*

[2000] JLR 363 :- "The Court of course has on many occasions said that its duty in looking at an appeal on conviction from the Magistrate below is to examine the transcripts to see if there was evidence on which the Magistrate concerned could properly have come to the decision he did. If there was that evidence then even though the Court might not necessarily have come to the same decision, the Court does not lightly interfere with it. The Court has to be satisfied that there was insufficient evidence for the Magistrate to have come to the decision he did, or that he drew the wrong conclusions and inferences from the evidence before him." 4. In terms of the appeal against sentence the test that we apply is whether or not the sentence was manifestly excessive or wrong in principle. 5. The offence of dangerous driving is set out in Article 22 of the Road Traffic (Jersey) Law 1956 ("the 1956 Law") in the following terms:- "22 Dangerous driving (1) If any person drives a vehicle (other than a wheelchair) dangerously or rides an animal dangerously on a road or other public place, he or she shall be guilty of an offence under this Article. (2) A person guilty of an offence under this Article, such offence being a motoring offence, shall be liable to a fine or to imprisonment for a term not exceeding 2 years or to both

such fine and imprisonment. (3) A person guilty of an offence under this Article, such offence not being a motoring offence, shall be liable to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment. (4) Particulars of any conviction for a motoring offence under this Article shall be endorsed on any licence held by the person convicted." 6. Article 24 of the 1956 Law makes provisions that supplement Article 22. Where relevant, Article 24 of the 1956 Law is in the following terms:- "(1) For the purposes of Articles 22 and 23, a person is to be regarded as driving dangerously if and, subject to paragraph (3), only if - (a) the way the person 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. ... (3) Refers to the state of a vehicle and is not relevant in the circumstances. ... (4) In paragraphs (1) and (3) "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 should be had not only to the circumstances in which the driver could be expected to be aware but also any circumstances shown to have been within the knowledge of the accused." 7. The lesser offence of careless driving is set out in Article 25 of the 1956 Law and is in the following terms:- "25 Careless driving (1) If any person drives a vehicle, or rides, leads or drives an animal, on a road or other public place without due care and attention or without reasonable consideration for other persons using the road or other public place, he or she shall be guilty of an offence under this Article. (2) A person guilty of an offence under this Article, such offence being a motoring offence, shall be liable to a fine not exceeding £1,000. (3) A person guilty of an offence under this Article which is not a motoring offence shall be liable to a fine not exceeding £500." 8. The distinction between dangerous and careless driving is one of degree. A person is guilty of dangerous driving if his standard of driving falls far below that of the competent and careful driver whereas to be guilty of careless driving his standard of driving simply needs to fall below the standard which is to be expected of a competent and careful driver. In assessing these matters no regard is paid to any particular qualification or additional skill a driver might possess; it is the standard of the ordinary competent driver that is the measure. The test is an objective one. 9. There is no allegation that the Magistrate failed to understand or apply the correct legal tests and principles. The appeal against conviction is put, in effect, on the basis that the Magistrate wrongly interpreted the evidence before her. This is, it seems to us, the equivalent of saying that the evidence did not support the interpretation placed on it by the Magistrate and therefore could not support the finding of guilt with regard to dangerous driving. 10. This case is somewhat unusual in that this Court has before it very close to the entirety of the evidence that was available to the Magistrate below in the form in which it was available. There was no live evidence called by the Crown and the evidence for the Crown comprised the documentation in the case including the question and answer interview of the Appellant, photographs, and CCTV evidence which the Court has had the benefit of seeing. The only live evidence before the Magistrate (which was before us in the form of a

transcript) was that of the Appellant himself and his employer's representative, Mr Hart. There is no suggestion in the transcript or in the decision of the Magistrate, that she viewed the Appellant (or indeed Mr Hart) as other than an honest and truthful witness. 11. The facts, which were to a very substantial extent not contested, are in brief as follows:- (i) On 30 th June, 2015, the Appellant was driving a double-decker bus on his way back from St Brelade to the bus depot in St Helier. He had passengers on both the lower and upper deck of the bus. (ii) The route for the journey involved driving along La Route de la Libération in an easterly direction and then straight on until turning back to the bus depot where the driver should pull up outside the depot to let his passengers alight. (iii) The Appellant in fact took what is characterised as the "wrong route" in that he turned left off La Route de la Libération along the Esplanade crossing Castle Street and on towards the bus depot. (iv) On arriving at the depot the Appellant turned right into an entrance for single decker buses. (v) Double-decker buses do not fit into the entrance for single-deckers as there is insufficient height to accommodate the upper deck. The double-decker impacted with the top of the entrance causing substantial damage to the bus, some damage to the entrance, and minor injuries to the passengers on the upper deck. (vi) At the time of the collision the bus was being driven at 6mph. (vii) The Appellant accepted that at the time that he made the turning right he had forgotten that he was driving a double-decker bus. 12. As we have said the route the Appellant should have taken on that day was to continue straight on up La Route de la Libération . In turning up the Esplanade, therefore, he was taking the wrong route for that scheduled journey. However it is of some significance that, at other times of the day and on other routes, double-decker buses do carry on directly down the Esplanade and then turn right at Castle Street before looping round the bus station to approach it from the East. In other words, it was not wrong for the Appellant to have continued down the Esplanade at least as far as Castle Street in a double-decker bus as such - it was merely wrong for him to have done so at that time of day. It is also important to note that the Appellant drives both single and double-decker buses on a variety of routes. 13. In making her decision convicting the Appellant of dangerous driving the Magistrate made certain findings. Those findings in essence are as follows:- (i) The Appellant's driving was unremarkable and he appeared to indicate properly, looked in his mirrors and drove at an appropriate speed. (ii) There was no suggestion that the Appellant flouted the law deliberately. (iii) Some double-deckers enter the western part of the Esplanade but only in the morning rush hour when they then turn right at Castle Street to continue their route to the bus station. (iv) There was no inappropriate speed or going against traffic signals. (v) There was no evidence that the Appellant was tired or was so tired that he knew he should not have been driving. (vi) The Appellant looked at a screen in the bus but this was not an indication that he knew he was driving a double-decker as this would be inconsistent with passengers alighting there at that time of the day. The Appellant failed to pay proper attention to all the circumstances of his driving from at least the junction where he took the wrong left turn at the western end of the Esplanade. All along that section he was not concentrating. (vii) In all the circumstances the Appellant did not appreciate the reality of the situation from the

moment at which he turned left along the Esplanade to the moment of the collision which was a substantial distance. 14. The appeal against conviction is put on the basis that the findings at 13(f) and (g), on the available evidence, were not findings that the Magistrate could safely make. 15. In our view it could not be inferred from the mere fact that the Appellant took the wrong route that his standard of driving fell far below that of the ordinary competent motorist from the moment that the wrong turning was taken. The evidence in our view did not support that conclusion. In fact for the initial part of his journey along the wrong route there is nothing to suggest that the Appellant's driving was other than of a high standard. We had the benefit of viewing the CCTV recordings from within the cab and the front of the bus. It is clear to us that the Appellant at all times drove at an appropriate speed, indicated carefully at appropriate times and maintained a proper look out in order to make allowances for other traffic on the road. As far as the CCTV recording discloses, right up until the moment of the collision, the driving was entirely competent. Furthermore, as referred to by the Magistrate, the CCTV recording discloses one additional matter which we view as highly significant. When the bus stopped to allow passengers to alight it is clear that before closing the doors and pulling off, the Appellant looked at a screen located above his upper right shoulder at the front of the cab. That screen indicates whether or not there are passengers on the stairs of the bus and is to be found only in double decker busses. That he looked at that screen means, we think, that he was aware that he was in a double decker bus and was taking appropriate and standard precautions before closing the door and pulling into the traffic. 16. This, it seems to us, is evidence that, whilst he did take wrong turning, at least until the junction between the Esplanade and Castle Street, the Appellant drove appropriately and was aware he was in a double-decker. Indeed as the Magistrate herself said his driving was "unremarkable". Had he then turned right to correct the fact that he had taken the wrong route and gone up Castle Street and then along the Route de la Libération no offence would have been committed. 17. We are left therefore with the finding by the Magistrate, on which she based the conviction for dangerous driving, that the Appellant was simply unaware that he was driving a double decker from the moment that he took the wrong route. It was characterised that he was on "auto-pilot", but that does not to us appear to be supported by the evidence. The most that the evidence supports in our view is that in crossing the junction with Castle Street and approaching the Liberation Station in order to turn right the Appellant at that point was demonstrating that he had forgotten that he was driving a double decker bus. That was not the basis on which the Magistrate made her finding and we therefore have to turn to consider what finding could have been made on the facts that we think are supported by the evidence. 18. In our view the facts supported by the evidence are substantially more consistent with a momentary or very short duration single error of judgment which led to the rather dramatic collision. We find it difficult to characterise that as other than falling below the standards of a competent driver, and quite clearly so, but not so far below as to constitute dangerous driving. 19. Accordingly we allow the appeal against the conviction for dangerous driving and substitute for it a conviction for careless driving. 20. In the light of that determination we now turn to

consider the matter of appropriate sentence. As we have allowed the appeal against the conviction for dangerous driving, the sentence imposed by the Magistrate for dangerous driving falls away. It is for us to consider afresh the appropriate sentence for careless driving. 21. We were addressed at some length on the appropriate guidelines and we accept that the earlier guidelines are applicable in these circumstances because of the date upon which the offence was committed. 22. We consider that the level of carelessness exhibited here is the equivalent level of culpability as, for example, carelessly turning right across oncoming traffic, by reason of a momentary lapse and we believe, therefore, that this falls within category B of the guidelines. 23. There was injury, albeit thankfully minor, to members of the public and substantial damage to property. We note that the Appellant's first reaction, as shown by the CCTV footage, upon the accident taking place was to rush up the stairs of the double decker bus to tend to his passengers. That speaks well of him. 24. We also note that he has no criminal record and indeed has an unblemished driving record. He is characterised by his employers as one of their best drivers and has worked as a bus driver for a number of years. 25. We bear in mind that there is a public interest element to be considered in all sentencing and in our view the appropriate sanction in this case is a fine and a period of disqualification. 26. Accordingly we impose a fine of £500 (with three weeks in default). On the matter of disqualification we note that the Appellant has already, at the expense of some reduction of his income, been disqualified for 40 days. In our view the appropriate period would have been one of three months so we impose a further disqualification of six weeks from the date hereof. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Milho v AG

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