# ROYAL COURT

7th August, 1989

Before: The Bailiff and
Jurats Blampied and Le Boutillier

---

Police Court Appeal: Jacqueline Pearl Priest

---

Appeal against a fine of £100 (or 25 day's imprisonment in default) and a period of disqualification of twelve months following a conviction on a charge of driving whilst unfit through drink or drugs (Article 16, of the Road Traffic (Jersey) Law, 1956).

---

Advocate S.C. Nicolle for the Crown
Advocate W.A.M. Bridgeford for the appellant

---

## JUDGMENT

THE BAILIFF: On the evening of the 1st January, this year, Mr. and Mrs. Priest went to a party, having been to two public houses before. There is nothing whatsoever wrong in going to a party or public houses at any time, particularly on New Year's Day. However, if you do that of course you must observe the laws of this Island, particularly in relation to Article 16 of the Road Traffic (Jersey) Law, 1956. On that particular night they were intending Mrs. Priest to drive, because we were told, according to the

evidence, that they took it in turns; but according to the deposition, she in fact drove for ninety-nine per cent of the time when they went out.

However, on that particular occasion when they finished up at a party in Seaton Place, I think it was Mr. Priest drove the car as far as West Park. There, when confronted with a red light, the car was stopped and Mrs. Priest, detecting that her husband should not have been driving, agreed to change places with him. At that time the car was seen by the police and stopped. Mr. Priest was charged with driving whilst his ability to drive was impaired under Article 16 and was convicted and disqualified from driving for two years. Mrs. Priest was convicted of being in charge of the vehicle and was disqualified from driving for one year. It is against her disqualification that she appeals to this Court this morning.

Article 16 provides in paragraph (2): "A person convicted of a motoring office under this Article" - which Mrs. Priest was - "shall, unless the court for special reasons think fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification ..... be disqualified for a period of twelve months".

Mr. Bridgeford has urged as fully as he possibly could before us that the learned relief Magistrate erred in not finding that there were special reasons in the case of this appellant. The burden of proof is in fact on the balance of probabilities and having heard the evidence the learned relief Magistrate rejected the submission which Mr. Bridgeford had made before him that there were special circumstances which would have entitled him not to disqualify the appellant. Wilkinson's Road Traffic Offences (14th edition) Volume 1 was referred to, and although it appears to have been a different edition, there seems to be no reason to suppose that it is so out of date that the main principles were not before the learned relief Magistrate. We do not know whether in fact the edition he referred to contained the case on page 1/900 of the 14th edition which has been produced to us, that of Chatters -v- Burke, but it did not increase or enlarge particularly the main principles which had been well-established previously and which were considered by this Court in the case of Dennis George Le Monnier in a judgment given by Commissioner Hamon on the 26th April, of this year. There was the case of Whittall -v- Kirby (1946) 2 All ER 552, which is referred to by Wilkinson as

laying down the principles which guide the English Courts where there are similar provisions in the English acts. The four minimum criteria laid down there were as follows: "For a special reason the matter must (a) be of mitigating or extenuating circumstance; (b) not amount in law to a defence to the charge; (c) be directly connected with the commission of the offence and (d) be one which the court ought to properly take into consideration when imposing sentence". As I say, Chatters -v- Burke enlarged that aspect slightly, dealing with one particular aspect of special reasons, that is to say the distance which it could be expected the driver was to drive or actually had driven. The context of the work itself is as follows at page 1/899: "The shortness of the distance driven is capable of amounting to a special reason particularly where the defendant has only driven his car at the request of a third party. It cannot, however, amount to a special reason unless the shortness of the actual distance driven by the defendant is such that he is unlikely to be brought into contact with other road users and danger which is then unlikely to arise".

As I say the case of Chatters -v- Burke lays down seven matters in considering the question of the shortness of distance which was driven as follows: "1. How far the vehicle was driven. 2. In what manner was it driven. 3. The state of the vehicle. 4. Whether the driver intended to go further. 5. The road and traffic conditions prevailing at the time. 6. Whether there was a possibility of danger by coming into contact with other road users or pedestrians. 7. What was the reason for the car being driven".

At the conclusion of Mr. Bridgeford's submissions the learned relief Magistrate at page 109 of the transcript says this: "I have considered the question of whether or not your case can fall within the special reasons. They are quite clearly defined in Wilkinson's Road Traffic Offences. I have a different version in front of me to the one quoted in the case which your learned counsel has put before me. I consider, though, this can fall into either the emergency category or the shortness of distance driven category. It does not appear to me that it falls strictly speaking into either of those categories. The emergency category, firstly, because there does not appear to be the sort of emergency that was presupposed" - and I interpolate here that Mr. Bridgeford has not urged that it was - "and secondly because there does not appear to me to be the degree of necessity required to fall within

the emergency category. In relation to the shortness of distance driven point, I have great difficulty in accepting that this changeover of the drivers took place merely in order to drive such a very short distance. In fact, on balance, I do not accept that it is true as a matter of fact and therefore for that reason I cannot apply the shortness of distance principle. Even if I did accept it as being true, I would still have great difficulty in applying it because of the fact that it is a very busy road and there would have been traffic on that road at that time".

What Mr. Bridgeford has urged upon us is that the learned relief Magistrate erred in finding that there would have been traffic on the road at that time because he had before him the statement of evidence of P.C. Carré in which he says: "And the traffic on the road was almost non-existent".

However, Miss Nicolle for the Attorney General has urged us to find that once the Magistrate had rejected the submission that Mrs. Priest was only going to drive a short distance and in fact had decided that she had formed the intention to drive home to St. Brelade, he could properly take into account the potential traffic between West Park and St. Brelade and the number of road users that could be expected to be on the road in the small hours of the morning of New Year's Day. Secondly, Miss Nicolle said that even if it were accepted that she was going to drive into the layby, it must be judicial knowledge that many people in that area use those laybys just past West Park in a westerly direction, to park their cars because they do not have parking places on their properties and that therefore in the early hours of this morning it could be expected that there would be a number of people about in the car park or layby and therefore there would be a danger. She drew our attention to the case of Coombs -v- Kehoe (1972) 2 All ER 55. This was a case where the respondent had parked his lorry in a street and went to a public house and consumed some alcohol. He had then driven the lorry some 200 yards along a busy thoroughfare to another parking place. Whilst parking the lorry he collided with two vehicles. Although there might be a special reason for non-disqualification under Section 5(1) of the 1962 Act: "where a driver only moves his car a few yards without the likelihood of coming into contact with other users of the road, but where a vehicle is driven some 200 yards through a busy street there is a potential source of

danger to other users of the road the fact that the driver was only parking a vehicle and only covering a short distance for that purpose could not amount to a special reason". She invited us to take that case into account when considering that even the short distance principle there was a risk that other cars and vehicles would have been in the layby.

We do not think we have to go as far as that. We are satisfied that the learned relief Magistrate was entitled to find as a matter of fact that he did not accept the evidence of the appellant and her witnesses and on a balance of probabilities found in fact that she was intending to drive more than the short distance. Therefore, to say that he might have misdirected himself on the secondary point if he had not found on the primary point against the appellant, really is not a ground for allowing this appeal this morning. Mr. Bridgeford, you have urged everything that could be said in favour of your client. We have looked at the personal circumstances, but personal circumstances I am sorry to say are not special circumstances which would entitle the relief Magistrate not to disqualify. We are sorry for your client, obviously she and her husband have endeavoured to the best of their ability to see that this sort of position does not arise, but it has arisen and on the occasion in question we cannot find that the relief Magistrate was wrong to find that there were not special circumstances. Therefore, the appeal is dismissed. Advocate Bridgeford, you may have your legal aid costs.

Authorities referred to:

Wilkinson's Road Traffic Offences (14th edition), Volume 1, at pp 1/890, 891, 893, 894, 898, 899, 900 (in particular the case of Chatters -v- Burke (1986) 3 All ER 168) and 905.

Whittal -v- Kirby (1946) 2 All ER 552.

A.G. -v- Jonathon James Clarke, Appellant: (17th March, 1988) Jersey Unreported, at p 25.

Police Court Appeal - Dennis George Le Monnier: (26th April, 1989) Jersey Unreported.

Duck -v- Peacock (1949) 1 All ER 318.

Coombs -v- Kehoe (1972) 2 All ER 55.

James -v- Hall (1972) 2 All ER 59.