

Judgment 17/2004

**Ian Louis Hutchinson – Royal Court –
6 January, 2004**

Criminal appeal from the Magistrate’s Court – convictions for driving at a speed dangerous to the public and failing to stop when ordered to do so – evidence as to the identity of the driver – appeals dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of January, 2004 before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E.
Lieutenant Bailiff; sitting alone

In the action of THE LAW OFFICERS OF
THE CROWN against IAN LOUIS HUTCHINSON (“the Appellant”) to pursue the appeal of
which the said Hutchinson gave notice against the conviction imposed upon him by the
Magistrate’s Court on the 1st day of August, 2003;

THE COURT, having on the 2nd day of
January, 2004 heard Advocate M. Baudains for the Appellant and Advocate P. Robey for the
Crown this day delivered judgment in the terms attached hereto and DISMISSED the appeal.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

Approved Text

IN THE ROYAL COURT OF GUERNSEY

FULL COURT

Between:

IAN LOUIS HUTCHINSON

Appellant

And

LAW OFFICERS OF THE CROWN

Respondent

Judgment

1. The Appellant was charged before the Magistrate with four charges relating to driving a Honda Civic car, registered number 7214, on a public highway in the early hours of 14th May, 2003. These were driving at a speed dangerous to the public contrary to Article V (1) of the Ordonnance relative au Trafic Vehiculaire en cette Ile, 1929, as amended; alternatively driving the vehicle in excess of the 35 m.p.h speed limit, failing to give information which might have led to the identification of an offender, and with failing to stop when ordered to do so by a uniformed police officer contrary to the Ordonnance avant rapport au Trafic Vehiculaire, 1929, also as amended. As the Court convicted the Appellant on the first charge no finding was made on the alternative charge, and no Order was made on the Third charge. This Court is, accordingly, only concerned with the first and fourth charges against the findings on which this Appeal is preferred.

2. The matters in dispute at the trial involved the identity of a vehicle observed by two police officers being driven at high speed along Forest Road from the direction of the Airport in the early hours of the 14th May, and the identity of the person driving it. On that occasion Advocate Baudains submitted on behalf of the Defendant that the prosecution had not proved, up to the required standard, that the vehicle which passed the police at well over the speed limit was 7214, of which the Appellant was the registered keeper. He pointed out that only one officer had noted the number, and that, at best, he could only have had a fleeting glimpse of the car. Even if that had been proved the Court still had to be satisfied beyond reasonable doubt that the Appellant was driving vehicle 7214 at the material time. At the outset of the appeal Mr. Baudains said he was no longer challenging the finding that the offending vehicle was the black Honda, and so the only issue remaining for decision is the driver's identity.

3. The officers, P –c's Wilcox and Lenormand, were on uniformed mobile patrol and stationed near Forest Road Garage, the lights from the showroom of which illuminated the immediate surrounding area. The case for the prosecution thus consisted of these two officers' evidence, the statement of P –c Lenormand, the record of the interview of the Defendant, the two photographs and the statement of the officer who processed them. At its conclusion Mr. Baudains informed the Court that the Appellant wished to offer no evidence and the Defence thus rested on the submission he then made, as happened, for example, in Jones v. Metcalfe [1967] 1 WLR 1286, which also involved the identity of the lorry concerned and in which the conviction was set aside on a case stated.

4. Each officer testified that at around 12.10 a.m. he heard the loud revolutions of the engine of an approaching car, from the sound of which each of them concluded it was being driven at a high speed. As the vehicle approached Pc Wilcox pointed the VDU radar machine

towards it. The machine recorded speeds of 99, 92 and 85 miles per hour over a three second period. Pc Wilcox, wearing his reflective jacket, moved into the road while Pc Lenormand activated his blue light. Pc Wilcox signalled the vehicle to stop, which it failed to do, hence the fourth charge. Pc Lenormand accordingly gave chase. In the short period of time while the vehicle was passing him, Pc Wilcox testified that he was able to see its make and model, which he said was a black Honda Civic. The registration number was 7214, which Pc Wilcox shortly afterwards recorded on his motorcycle tank.

5. P –c Le Normand followed the vehicle past St. Margaret’s Lodge, but despite accelerating up to 95 miles per hour it managed to lose him. When he was joined by his colleague, the officers radioed the number to the Police Control Room, and as a result of the information received, proceeded to a car park in Rosaire Avenue where they saw a black Honda Civic, number 7214. Both officers described the bonnet and tyres of the car as very hot. P –c Wilcox’s evidence was that the engine was ‘pinging’ and said:

‘...you could have cooked an egg on the tyres’

5. The officers then proceeded to a nearby house named ‘Chelsea’. After some delay a girl named Emma Le Fricc opened the door. She prevaricated but eventually admitted that the Appellant was in the house. The officers found him in bed watching television. Pc Norman conducted an interview, presumably at the house, in the presence of Pc Wilcox. It commenced at 12.35 and concluded at 12.52 a.m. The record of these questions and answers was put in evidence. In the course of the interview the Appellant agreed he was the registered owner of the Honda, but said it did not belong to him. He denied that he had been driving it that night. Four sets of keys to it were available to ‘anyone that comes to the house’. In response to further questions put to him during the interview, the Appellant said that he had last used the car a couple of days ago, and that as far as he knew it had not been stolen. When asked why the engine and tyres were hot he replied:

“A. The sun probably, black attracts heat.”

7. After a short retirement the Magistrate delivered judgment. He considered the Appellant’s answers during the police interview, but accepted the evidence of the two officers, particularly that of Pc Wilcox as to the registration number, administered a correct direction as to the burden of proof, and said he was in no doubt that the Honda was the one observed on Forest Road. He also cited Section 18 of the Motor Taxation and Licensing Law 1987, which is a two-fold deeming section, and provides (a) that the person applying for registration is the owner of the vehicle which is the subject of the application, and (b) that the registered keeper (which may or may not be the same person as the owner) is the owner of the vehicle.

8. This portion of the magistrate’s judgment is vigorously attacked by Advocate Baudains in the Notice of Appeal lodged on the 14th August, and amplified in the skeleton argument filed on the Appellant’s behalf on 30th September, 2003. In addition he included the general grounds that the decision was unreasonable, could not be supported on the evidence and had occasioned a miscarriage of justice. Before this Court Mr. Baudains argued that in citing section 18 (which, in any event, has not yet been brought into force) the Magistrate had, in effect, shifted the onus to the Defence to show that he was not the driver at the relevant time, notwithstanding that he had earlier administered a correct direction both as to the onus and as to the degree of proof required in a criminal case.

9. Mr. Baudains drew the Court’s attention to Blackstone’s Criminal Practice, 2003 Edition, paragraph C.1.8 (which was not cited to the Magistrate) of which states that there is no general presumption that the owner of a vehicle was the driver of it at a particular time, notwithstanding the various statutory provisions which establish owner liability in certain specific circumstances. In the instant case neither officer was able to identify the driver and it is therefore necessary to ascertain whether the proved facts were sufficient to establish the

Appellant's guilt beyond reasonable doubt. The case against him depended on circumstantial evidence, and it had to be shown that the facts were incapable of explanation upon any reasonable hypothesis other than that the Appellant was the driver of vehicle 7214.

10. It is clear from the extracts from the textbooks included in the Appellant's list of authorities that, as in any criminal case, a material fact such as the identity of the driver has to be proved beyond reasonable doubt. The authority for this proposition is Clarke v. Director of Public Prosecutions [1992] 156 J.P 605, the Report of which has been very helpfully included at Tab 7 of the Appellant's bundle. In that case the magistrates had held that proof that the defendant was the owner of the vehicle shifted the burden of proof to him to show that he was not. The Divisional Court held that this direction was wrong, and that the question for decision was and remained throughout the case: is the Court sure that the appellant was the driver?

11. Clarke v. D.P.P is cited both in Blackstone and in the 19th Edition of Wilkinson's Road Traffic Offences at paragraph 1.128. Owen J., who delivered the judgment of the Court, said that, notwithstanding the misdirection, the rest of the evidence was overwhelming against the appellant and his appeal was dismissed. A similar result occurred in Elliott v. Loake [1983] Criminal Law Review 36, where ownership was established, but there was also unchallenged evidence that debris from the stationary BMW car with which the defendant had collided exactly matched samples from the defendant's car. In Ende v. Cassidy [1964] Criminal Law Review 595 the defendant, who was the owner of the car, was charged with obstruction of the highway outside the block of flats where he lived. He was acquitted on a submission of no case, and the prosecution successfully appealed, the Divisional Court holding that the proved facts raised a *prima facie* case, sufficient for the defendant to answer.

12. Crown Advocate Mr. Robey supported the findings of guilt. He submitted that there was ample evidence on which the trial Court could convict the Appellant, that there was a proper direction on the burden of proof, and that from the context of the judgment it is perfectly clear that the magistrate was satisfied beyond any reasonable doubt that the Appellant was the driver at the material time. Mr. Robey added that when the officers, having obtained information as to the person registered as the keeper, and his address, inspected the Honda in the former motor tax offices' car park, shortly after seeing it on Forest Road, the bonnet and the tyres were very hot, suggesting that it had recently been driven at speed. That portion of the officers' evidence was not challenged by Advocate Baudains.

13. Mr. Robey said that it was too fanciful to suggest that an unknown person had taken the car that night, and had returned it to the very place where it was found. Accordingly he submitted the only two possible candidates were the Appellant and Emma Le Fric. He then addressed the question of whether the possibility that Emma had been the driver of the Honda at the relevant time could safely be excluded beyond reasonable doubt. He drew attention to the fact that the defendant was seen by the officers to be wide awake when they entered, whereas Emma appeared to be 'groggy and sleepy' and gave the appearance of having just awakened.

14. The magistrate, having administered correct directions as to the burden and standard of proof, found that the Honda No. 7214 was the one seen and recorded by P –c Wilcox on his petrol tank. Save as to observation of the number, P –c Lenormand corroborated P –c Wilcox in all material respects. Despite the misdirection regarding section 18, in my judgment the unchallenged fact that the Appellant was the registered keeper of the Honda, taken with the evidence as to the condition of the vehicle and the observations of the police as to the state of the two occupants of the house at Chelsea, required an explanation. The Appellant gave no explanation on oath which could be tested in cross-examination. That which he gave at the interview regarding the condition of the engine and tyres can scarcely be regarded as credible.

15. As in Clarke v. D.P.P., in which there was a misdirection as to the shifting of the burden of proof, apart from the reference in the instant case to Section 18, the evidence *aliunde* was sufficient, in the absence of any or any credible explanation, to satisfy any reasonable tribunal well beyond any reasonable doubt that the Honda, registered number 7214, was the vehicle the police had just recently observed. The Magistrate also addressed the question of whether the speed was dangerous in all the circumstances, and concluded that it was. For my part I can say that, apart from the issue of identity, the last finding was inevitable. In all the circumstances I am satisfied that the convictions were just and safe, and the appeal is accordingly dismissed.

A.R.W.Hancox.
Lieutenant Bailiff
6th January 2004