

Judgment 24/2004

**Luke James Ellis – Royal Court –
11 June, 2004**

Criminal appeal from the Magistrates Court – sentence for permitting another to drive a motor vehicle without third-party insurance – special reasons alleged why driving licence should not be suspended – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

11th day of June, 2004 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; sitting alone.

In the action of THE LAW OFFICERS OF THE CROWN against LUKE JAMES ELLIS (“the Appellant”) to pursue the appeal of which the said Ellis gave notice against sentence imposed upon him by the Magistrate’s Court on the 13th day of May, 2004;

WHEREAS on the 28th day of May, 2004 THE COURT having heard Advocate M. G. A. Dunster for the Appellant and Advocate G. D. McKerrell for the Crown on a point of law, DISMISSED the Appeal, written reasons to be handed down in due course.

THE COURT this day handed down the said written reasons in the terms attached hereto.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

ROYAL COURT OF GUERNSEY

Before Geoffrey Robert Rowland D.B.

Appeal Against Sentence

**(Special Reasons)
28th May 2004**

Luke James Ellis

1. On 28th May I heard Mr Ellis' Appeal and dismissed it. I stated that I would hand down my reasons for so doing.

Introduction

2. Luke James Ellis, (“the Appellant”) aged 22, pleaded guilty in the Magistrate’s Court to an offence of permitting his girlfriend Miss C Le Page to use his motor vehicle on a public road not being covered by third party insurance. She was also under 25. He had to establish special reasons why his licence should not be suspended. The Assistant Magistrate did not find that special reasons had been established.

3. The Appellant was represented before me by Mr Dunster, who did not appear for the Appellant in the Magistrate’s Court.

4. It was common ground that the burden of proof when a defendant seeks to establish special reasons is on the defendant. The standard of proof is the balance of probabilities.

5. In the proceedings in the Magistrate’s Court the Appellant admitted that he had permitted Miss Le Page to drive his car but he believed her to be insured. He claimed that prior to the renewal date of his policy he had telephoned to his insurance broker, R A Rossborough (Guernsey) Limited. This had been sometime in the last fortnight of August 2003. He had contacted the broker because he wished to amend his policy in order to enable him to drive cars other than his own named car. The clear inference was that he knew that his policy at that time did not permit him to drive other cars.

6. He knew that Miss Le Page had an identical policy with the same insurer. The Appellant did not ask the broker about Miss Le Page’s policy nor apparently did he give any details whatsoever about it to the broker. His questions related solely to his own policy.

7. Both policies were produced as evidence. Both policies in my opinion indicated that the insured person in each case was not permitted to drive other persons cars. The Appellant claims that he paid no attention to his new policy document on this particular point because he relied upon the telephone assurance that he claimed he had been given by his broker. He had had however to return the policy to the broker for other corrections to be made.

8. The Appellant’s Counsel in the Magistrate’s Court in examination in chief had asked the Appellant to tell the Assistant Magistrate as to why he -

“ called Rossboroughs, and what you said to them and what they said to you ”

9. This open question sought to elicit the full extent of the conversation the Appellant had with his broker. He gave evidence as follows –

“I can’t give an exact date, but within the last two weeks of August, I phoned up because I wanted to change my insurance policy so that I could drive anyone else’s car, insured; And when I spoke to the person on the phone..... I didn’t take down any record of who I spoke to, he told me that because I was fully comp I didn’t need to worry about my insurance policy, I was already insured to drive other people’s cars. But from what I was told later on, because I was under a young drivers policy, I’m not actually allowed to drive anyone else’s car, only my car – but they didn’t know – the person I spoke to on the phone didn’t know that. I was told later on that because I’m under a young driver’s policy – which is under 25 years old, I’m not allowed to drive anyone else’s car other than my own, but I’m sure the person on the phone talking to me didn’t know that. Whether or not he didn’t know how old I was or what policy I had.”

10. His evidence indicated that there was an absence of precision or clarity in the information which he had given and the questions which he had asked and on which any opinion was given.

11. It was, of course, open to the Appellant to have called as a witness the broker’s employee with whom he had spoken. No such evidence was called. Apparently the broker had no record of any such conversation.

12. The Assistant Magistrate had to determine the matter on the evidence before her. She was entitled to proceed on the basis that the Appellant had given a full answer to the open question which he had been asked by his Counsel. She was entitled to take into account the apparently vague nature of the information given by the Appellant which established that he had not emphasised his age. The Assistant Magistrate found as a fact that the Appellant was not misled by the broker.

13. Mr. McKerrell referred me to the case of Labrum v Williamson [1947] 1 All ER 828. In that case a policy was issued to a garage owner. The policy he received was different to that which he had sought from the insurance company. It is unnecessary for me to go into further detail concerning that case. Suffice it to say that I have accepted Mr. McKerrell’s submission that the circumstances in the Appellant’s case are quite different. I am satisfied that the Appellant in this case was not misled in the circumstances envisaged in Labrum.

14. I now turn to the grounds of appeal filed on behalf of the Appellant upon which Mr. Dunster elaborated in argument before me.

Grounds of Appeal

Firstly

15. Mr. Dunster contended that the Assistant Magistrate’s finding that the broker had not been in possession of all relevant facts was unsupported by any evidence adduced at the hearing. He contended that the broker had in fact been given the policy number by the Appellant. That, he argued, should have sufficed so far as the broker was concerned. This had not come out in evidence.

16. It was reasonable for the Assistant Magistrate to infer that the Appellant did not provide adequate material details to the broker, particularly his age.

17. In my opinion if he wished to rely upon the fact that his girlfriend had a similar policy he should also have given details about that policy to the broker, including her age and sought confirmation as to whether her policy would entitle her to drive his car.

Secondly

18. Mr. Dunster contended that the Appellant's Advocate had failed to adduce from the Appellant all the evidence relating to the contents of the Appellant's telephone call to the broker. He argued that the Appellant ought not as a consequence to be punished for his failure.

19. That assertion is without merit. The Appellant's Advocate had sought to adduce precisely what had been said by the Appellant to the broker. There was no failure on Counsel's part.

20. Rule 6 (1) (c) of the Magistrate's Court (Criminal Appeals) Rules, 1989 gave me a discretion to permit further evidence to be heard if –

“further material evidence not available to one or other of the parties at the time of the Magistrate's Court proceedings is now available and that the interests of justice require that the said material evidence be heard.”

21. The Appellant had the evidence available to him. That is self evident. Indeed he was the only person who in the event could recollect the telephone conversation and give evidence.

22. I do not find any substance in Mr Dunster's submission on this ground.

Thirdly

23. Mr. Dunster pointed out that the Assistant Magistrate had asked some questions of the Appellant. He contended that she should have gone further. The implication was that the Assistant Magistrate should have assisted the Appellant to develop the Appellant's contentions that there were special reasons.

24. I do not accept that there is substance in this point. The burden is on the Appellant to establish special reasons. In any event he was represented by Counsel.

Conclusion

25. Having given most careful consideration to the grounds of Appeal valiantly and painstakingly argued by Mr. Dunster I do not find merit in any of them.

26. I therefore dismiss the Appeal.

Geoffrey Rowland
Deputy Bailiff