Judgment 35/2006 Timothy John Leadbeater – Royal Court (Criminal Appeal 22/2006) – 30th June, 2006 and 6th July, 2006

Criminal appeal from the Magistrate's Court – Sentence – driving with excessive alcohol – mandatory disqualification – "special reasons" argued on the "emergency" ground – Magistrate declined to find special reasons – appeals against that finding, and against the sentence generally, dismissed

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of July, 2006 before John Russell Finch, Esquire, Lieutenant Bailiff; present: David Charles Lowe, OBE, Derek Martin le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson and Keith Bichard OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, and Michael John Tanguy, Esquires, Susan Mowbray and Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurat's.

NO. 22 of 2006

In the action of THE LAW OFFICERS OF THE CROWN against TIMOTHY JOHN LEADBEATER ("the Appellant") to pursue the appeal of which the said Leadbeater gave notice against the sentence imposed upon him by the Magistrate's Court on the 20th day of March, 2006;

WHEREAS on the 30th day of June, 2006 the Court, comprising a Lieutenant Bailiff sitting alone, heard Advocate S. Brehaut for the Appellant and Advocate G.D. McKerrell for the Respondent on a point of law and HANDED DOWN JUDGMENT in the attached terms;

THE COURT this day having again heard Advocate S. Brehaut and G.D. McKerrell for the Appellant and Respondent respectively, DISMISSED the Appeal.

S. M. SIMMONDS
Her Majesty's Deputy Greffier

Approved Text
Handed down
30 June 2006

Royal Court of Guernsey

Appeal Against Sentence from the Magistrate's Court

Timothy John LEADBEATER (Appellant)
-v-
THE LAW OFFICERS OF THE CROWN (Respondents)

Appeal from a decision of the Magistrate's Court of 20 March 2006

Judge Finch
Advocate for the Appellant: S Brehaut
Advocate for the Respondent: G McKerrell

Introduction

1. On 20 March 2006 the Appellant pleaded guilty to a charge of driving with excess alcohol and was fined £400 and disqualified for two years. An application put forward by the Appellant's Advocate for the court to find special reasons and not impose the otherwise mandatory disqualification failed. The appeal today relates to that finding.

2. It is well-established that the onus lies on the defence to establish special reasons on a balance of probabilities. At the hearing the Appellant gave evidence in an endeavour to establish what may be called the "emergency" ground applicable to excess alcohol offences. The learned Magistrate rejected the submissions made by Advocate Haskins and imposed a disqualification commensurate with the excess alcohol reading.

3. The substance of the Appellant's account was that following a verbal disagreement with his fiancée; the Appellant was notified by her daughter that she had left the dwelling. The fiancée has a history of depression and previous suicide attempts (transcript page 3 E-F). The daughter located a large pill bottle of painkillers, two thirds empty, although it was not evident how many pills had been there to start with. The appellant took the bottle and got into his car with the daughter (p.4, F-G). It was his intention to "*be able to find her rather quick".* Whilst driving, the daughter was constantly trying to contact the fiancée on his mobile phone. About 10 minutes or so elapsed according to the Appellant until contact was made (p.5, E-F). The Appellant intended to check on the address of his fiancée's best friend. It was *"literally seconds"* from contact being established with the Appellant's fiancée to his being stopped by the Police (p.6, C). In evidence the Appellant stated that he *"genuinely feared for her safety"* and that he didn't know how many of the tablets, *"if any"*, she'd taken (p.6, H). In a cross-examination the Appellant stated that his fiancée does not drive (p.8, G-H) and it was fair to assume she would have been on foot. He did not think to call the Police and did not know there was a chance he

would be over the limit (p.9, B-C). The Appellant *"assumed in circumstances like this perhaps, you know, she would go to her best friend".*

4. Advocate Haskins then submitted that special reasons were established. There was an emergency and the Appellant genuinely feared for his fiancée's safety. The objective test applicable was satisfied and there was "*sufficiently acute justification"* for his actions, which were based on *"genuinely and realistic concerns"* (p. 12, C-F).

5. The learned Magistrate, having considered the matter, declined to find special reasons. He indicated (p. 13-A):

> *"It's well-established that reaction to an emergency such that a person drives because no other realistic option is available is capable of amounting to a special reason so that the court enjoys a discretion not to disqualify someone".*

6. The nub of his findings was that:

> *"If there was a genuine and real fear that the fiancée had taken an overdose, one would have expected the emergency services to have been alerted, the Police to help find the woman and the ambulance service to take swift action once she had been located, but they were not and no friends were contacted to assist with the search, they may not have lived particularly close by, but Guernsey is a relatively small area geographically".*

7. Reference has been made to the various English cases in the Skeleton Argument, particularly TAYLOR v RAJAN [1974] 1 All ER 1087 and EVANS v BRAY [1976] Crim LR 454. The principles, including the decided cases, are well set-out in Wilkinson (22nd edition at 21.31, pages 1166 – 1170), which I have consulted when assessing the submissions of counsel. However, a good place to start is in the relevant section of Blackstone at p. 1036:

> *"Many of the cases related to drink-related offences where the defendant may be anxious to avoid a mandatory disqualification. The courts have consistently sought to limit the application of 'special reasons' to cases which are plainly meritorious".*

8. Blackstone cites the early case of ALCHROTH v COTTEE [1954] 1 WLR 1124 at 1127 where Lord Goddard C J said that the:

> *"… mere fact that there was a sudden emergency will not be enough if it is shown that there are other reasonable methods of meeting it".*

9. I have found the case of EVANS v BRAY (supra) of considerable assistance in resolving the appeal. It is cited in Wilkinson at p 1167. The Defendant there was telephoned on behalf of his wife, who was on holiday some 40 miles away, saying she urgently needed her blood-pressure tablets, which she had left at home. The Defendant, who had been drinking, was stopped by the Police en route. He had a reading of 171 in the blood (limit 80). He had not telephoned the emergency services. Although the Defendant succeeded in persuading the justices that there

was dire emergency, a Prosecutor's appeal to the Divisional Court found this decision could not be justified.

10. Quoting the relevant part of the report:

> *"Held: allowing the appeal, that applying TAYLOR v RAJAN. the direr the emergency the more obvious was the alternative course of dialling 999 or otherwise communicating with the local hospital or police, yet the defendant gave no thought to such a course of action alternative to his driving. His blood-alcohol concentration was at a very high level and in view of the danger to the public in his driving, militated against his driving being excusable".*

11. The commentary in the Criminal Law Review is also of interest and I quote it in full:

> *"Commentary – 'Special reasons' in respect of this offence are very narrowly confined. An emergency which is not 'dire' is unlikely to be thought sufficient; and if it is 'dire' then the obvious course is to dial 999, etc. A special reason is likely to be held to have existed only where there is dire emergency and no reasonable possibility of obtaining assistance from others".*

12. In this case the Appellant's reading was also a high one – 85 in breath (limit of 35). This is equivalent to 195 in the blood (see the table in Wilkinson, Appendix 1, p 1208). It is rather higher than that produced by the Defendant in the EVANS case and does not square well with the Appellant's comment to the Police when stopped that *"he'd had a couple of glasses of wine earlier in the day"* (p. 2, A-B). It will be recalled that the Divisional Court re EVANS deemed the Defendant's reading to be *"at a very high level"* and referred to the danger to the public. This Appellant was stopped at 8.25 pm, when other road-users are likely to be about.

13. Here, the Magistrate applied the correct test and his conclusions, especially at p. 13, D-E, were rational and in line with authority. It is very difficult in the individual circumstances of this case, to see how the Appellant would be able to establish special reasons, especially considering EVANS v BRAY. Not only was the decision on these facts one to which the Magistrate was entitled to come, but also it was in my judgment correct. The appeal fails and is dismissed.

Appeal dismissed

