

Judgment 48/2004

David Wilson – Royal Court – 28 October, 2004

Criminal appeal from the Magistrate’s Court – assault, driving in a manner dangerous to the public and criminal damage – review of the evidence – test is whether the Magistrate’s decision was obviously and palpably wrong – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 28th day of October, 2004 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff, sitting alone.

In the action of THE LAW OFFICERS OF THE CROWN against DAVID WILSON (“the Appellant”) to pursue the Appeal of which the said Wilson gave notice against conviction imposed upon him by the Magistrate’s Court on the 13th day May, 2004;

WHEREAS on the 21st day of October, 2004, THE COURT having heard Advocate M.G.A. Dunster for the Appellant and Advocate P. ROBEY for the Crown DISMISSED the Appeal, written Reasons to be handed down in due course, and MADE AN ORDER that the fine imposed upon the Appellant on the said 13th day of May 2004 be paid within one month of the date hereof, if not already paid;

THE COURT this day handed down 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.

David Wilson

**Appeal against Conviction - 21st October 2004
Reasons delivered on 28th October 2004**

1. On 21st October 2004 I heard submissions in this case from Mr Dunster representing the Appellant and Mr Robey representing the Respondents. I rejected the appeal in its entirety. I stated on that day that I would hand down reasons for my decision. These are my reasons.
2. On 13th May 2004 David Wilson (“the Appellant”) appeared in the Magistrate’s Court and pleaded not guilty to 4 charges. The plea to an alternative charge to the Third Count had not been accepted by the prosecution. He was found guilty on the First, Second, Third and Fifth charges.

The Magistrate then proceeded to sentence.
3. The Appellant has now appealed against conviction on all four charges namely:
 1. Assault on Miss Mahieu
 2. Assault on Mr. Tolcher
 3. Driving a car in a manner dangerous to the public
 4. Criminal damage to the vehicle owned by Miss Mahieu
4. I review the facts which emerged. The Prosecution contended that on 21st October 2003 the Appellant deliberately drove his car into Miss Mahieu’s car. They had been friends at some time in the past but there had been arguments between them. As a result of the Appellant’s actions Miss Mahieu and her passenger Mr. Tolcher suffered injuries, and her vehicle was damaged.
5. Miss Mahieu, aged 18, gave evidence that she was in the driving seat and Mr. Tolcher in the passenger seat. She had parked her car on a gravel area which forms an off-road car park area alongside Bulwer Avenue. She said her vehicle was parked about one car length from the public highway.
6. She had seen the Appellant driving past slowly in a line of traffic. In passing he had stared at her. A couple of minutes later he returned. She heard the Appellant’s car approaching along the pavement. It was making a high revving noise. He proceeded to drive his car into her car, the bumper hitting the driver’s door area of her car. This caused her vehicle to be pushed sideways along the gravel.
7. The Appellant, from inside his car had started shouting at her using abusive language. She had replied robustly. The exchange of words had been relatively brief. She had said that she would call the Police.

8. Neither she nor Mr. Tolcher had got out of her vehicle. The Appellant had not got out of his vehicle. The Appellant had then with the wheels of his car spinning abruptly driven away.
9. After telephoning her parents and advising them of what had happened she went to the Police Station and reported the incident.
10. She had suffered injury. The injury had been to her right arm and this caused her to go to the Accident and Emergency Department of the hospital. Her arm was in a sling for a couple of days.
11. Miss Mahieu was clear in her evidence that the Appellant had driven his car into her car on purpose. It was a deliberate act.
12. When cross-examined by Mr. Dunster she was insistent when the point was put to her on more than one occasion that the Appellant had not simply misjudged the situation, skidding on the gravel and colliding with her parked car. She considered that he had rammed his car into her car. In her view it was not an accidental misjudgement because of the way that he had driven his car. She thought the Appellant had deliberately driven his car into her car because he was “out to get her”. She accepted that there had been another car parked nearby in the car park and that the driver had not got out of his car following the collision. She said that the Appellant had not got out of his car and discussed the situation with her, a point she was to reiterate. There had been some cross examination as to precisely what the Appellant may have said to Miss Mahieu, particularly her allegation of words uttered by the Appellant about the Appellant’s mother.
13. Mr. Tolcher, aged 16, gave evidence that Miss Mahieu’s parked car had been facing inland. He too had heard a loud roaring of the engine of the Appellant’s vehicle and testified that the Appellant’s car had rammed straight into the right side door. He had been shocked and scared. The impact had been such that it had caused his head to smack on the main beam of the car by the seat belt. He recollected that the Appellant had then wound down his window and started shouting at Miss Mahieu and she had told him that if he did not go she would call the Police. He had then reversed his vehicle, wheels spinning, and driven off. Miss Mahieu had remained in the car. Miss Mahieu could not get out of her car. He had got out to check the damage to the front wheel and door. The other car in the car park had been some 6-car lengths away.
14. When cross-examined by Mr. Dunster it was put to Mr. Tolcher that the Appellant had been careless in his driving. Mr Tolcher did not accept that. He emphasised that the Appellant had been shouting abuse at Miss Mahieu which he inferred was not consistent with someone who had accidentally crashed into another person’s car. He disputed the Appellant’s contention as to the content of the verbal exchange between the two drivers. The Appellant had reversed out with screeching wheel spins as he did so. He was clear in his evidence that the Appellant had deliberately rammed his car into Miss Mahieu’s car, although he was reminded that Police officers had found no evidence of skid marks. At one point of his evidence (p.20 of the transcript) he did appear to equivocate on the issue of the Appellant’s intent but when this part of his evidence is read in its full context it is apparent that he might have developed his response to focused cross-examination if he had been invited to do so.
15. The Appellant gave evidence. His defence in essence was that he had driven his car without due care and attention as reflected in his plea to the Fourth charge which was the alternative charge. Consequential injuries to Miss Mahieu and Mr Tolcher were therefore caused unintentionally. He testified that he had not seen Miss Mahieu or Mr. Tolcher

originally when he had been driving from Town along Bulwer Avenue towards the Bridge. It was on his return journey after stopping at the Bridge that he had seen Miss Mahieu's car. He said initially in his evidence that he did not have any feelings about Miss Mahieu at the time of the incident and would not have rammed his almost new £10,000 car, which was his pride and joy, into Miss Mahieu's car.

16. He was later to volunteer that there was a problem between him and Miss Mathieu because he had a new girlfriend and Miss Mahieu had been sending text messages to her which threatened her. His intention had been to speak with Miss Mahieu having pulled his car alongside her car and to raise this issue. He was not angry but was probably annoyed with her. He was not a violent or dangerous man. He said that having seen Miss Mahieu's car from quite a distance he had slowed down to about 15 – 20 mph but had misjudged the entrance gap to the parking area. When he realised this he had turned a bit too late, had panicked and his reaction was automatically to slam on his breaks. The wheels of his car had locked and he had skidded into the side of her car. This had damaged her car and his front bumper. He had not intended to damage her car nor to cause her injury. He had not been driving in an aggressive way. It had simply been an accident.
17. The Appellant insisted that he had got out of his car and that Mr. Tolcher had got out of Miss Mahieu's car, but she had stayed in her car. He had then talked with her for 15 – 20 minutes talking about the damage to her car, and also raising the matter of the text messages to his girlfriend, which Miss Mahieu had denied. He had said that he would report the collision to his insurers.
18. His version of events was substantially different from that recollected by Miss Mahieu and Mr. Tolcher. Furthermore although the Prosecution witnesses contended that the exchange of words was brief he contended that he had remained in the car park talking to Miss Mathieu for some 15 – 20 minutes.
19. The Appellant had noted the other car in the car park but assumed that the driver had not got out of the car because he, the Appellant, had remained there for 15 – 20 minutes talking to Miss Mahieu.
20. When cross-examined by Inspector Breban the Appellant largely reiterated the evidence that he had given during Evidence in Chief. He again emphasised that after the collision he and Miss Mahieu had been chatting for some 15 – 20 minutes. When he raised with Miss Mahieu the matter of sending text messages to his girlfriend she had denied doing so. They had left it at that. He and Mr. Tolcher had got out of their respective cars at about the same time. Miss Mahieu had remained in her car apparently not wanting to inspect the damage. He accepted that he was a bit annoyed about the text messages which he said had been sent to his girlfriend by Miss Mahieu but he was not annoyed to the extent that he would go and smash up his new car. It was, he claimed, an honest accident. When asked about Miss Mahieu's reaction following the collision he said "she was laughing and joking around" even though subsequently she had, he accepted, reported the incident to the Police. It must have been that she got upset about it later.
21. He had, when turning into the car park, been driving too quickly and too closely to Miss Mahieu's car. If he had not panicked there would not have been a collision.
22. The Magistrate sought clarification on a few points. The Appellant said that, when laughing and joking immediately after the collision, Miss Mahieu had not mentioned anything about the injuries which she suffered. Mr. Tolcher had also been laughing. He reiterated once again that when the question of the text messages had been put to Miss

Mahieu by him, she had denied them and the matter had been left there. There had also been discussion about insurance and the damage.

23. Mrs Wilson, the mother of the Appellant gave evidence about her state of health and the fact that she was still in employment, leaving a question mark over whether the Appellant had referred to his mother's health and employment as alleged by Miss Mahieu and if he had in fact done so why he had done so.
24. It is clear from the evidence of the two prosecution witnesses and that given by the Appellant that there was a direct conflict of evidence as to what happened in the car park. The witnesses on both sides were consistent in their evidence. The essential and vital credibility of the witnesses was an issue which the Magistrate would have to consider and resolve.
25. The Magistrate carefully directed himself on both the burden and standard of proof. He had had the benefit of hearing live evidence, a point which he mentioned. He could observe the demeanour of the witnesses. It is noteworthy that he expressed himself satisfied that Miss Mahieu's evidence was "convincing and correct" and the Appellant's "account otherwise".
26. Whilst it was necessarily difficult to get into the mind of a witness (the Appellant) the Magistrate was satisfied that the prosecution had established its case. As to the evidence the Appellant had given about what transpired immediately following the collision he found the Appellant's account "implausible". He was satisfied that the Appellant had acted deliberately whilst angry.
27. I would observe that it is clear that the Appellant's evidence was not convincing, particularly with regard to the manoeuvre he alleged he was trying to execute. It is also doubtful that Miss Mahieu and Mr Tolcher would have spent 15-20 minutes 'chatting' to the Appellant after an incident which caused substantial damage to Miss Mahieu's car and particularly the Appellant's contention that the occupants of the car who had been injured and would be aware of the likely extent of the damage would have been laughing and joking about it. This view is fortified by the fact that the Appellant also raised the text message issue which Miss Mahieu denied.
28. There may have been inconsistencies about the words that were exchanged between the Appellant and Miss Mahieu and Mr Tolcher. Miss Mahieu had been physically injured and Mr Tolcher was shocked and scared after his head had smacked against the inside of the car. Differences of recollection often occur in cases such as this. It would appear that the Magistrate was in all the circumstances not troubled. This was not unreasonable given the fact that he did not find the Appellant's evidence convincing and correct.
29. The evidence demonstrated that the Appellant who was aggrieved by the previous conduct of Miss Mahieu had a motive for his actions and there is evidence that at the time of the collision he was annoyed.
30. The Magistrate was satisfied from the facts on each of the four charges that they were made out and particularly that from the nature of the Appellant's driving that he had been driving in a manner dangerous to the public. If, as he did, he found the Appellant guilty of deliberately ramming his car into Miss Mahieu's car then it was likely to be a straightforward matter to find the Appellant guilty on the First, Second and Fifth charges. The Defence had not denied that there was damage to Miss Mahieu's car and had not contested the injuries to Miss Mahieu and Mr. Tolcher which substantiated the two charges of assault.

31. Where, as in this case a Magistrate rejects a defendant's evidence and accepts the evidence of the principal prosecution witness after oral evidence has been given and they have been observed in the witness box it will only be in rare cases that interference by an appellate judge will be justified. Not to have seen the witnesses puts the appellate judge in a disadvantaged position.
32. I listened carefully to the arguments put forward by Mr Dunster. He put them forward both diligently and forcefully on behalf of the Appellant. They reflected the arguments which he had put forward in a detailed skeleton argument. I am satisfied that there was clear and ample evidence on which the Magistrate applying the criminal standard of proof could find the Appellant guilty on all four charges. There was ample evidence on which the Magistrate could conclude that the Appellant had deliberately rammed his car into Miss Mahieu's car and also for a guilty verdict on the three other charges. It was not sufficient for the Appellant to contend that the verdict was against the weight of the evidence. The proper test in this case as presented on the Appellant's behalf was whether the Magistrate's decision was obviously and palpably wrong. I am satisfied that the Magistrate's decision was not obviously and palpably wrong. [Law Officers of the Crown v Ogier and Le Noury – Guernsey Court of Appeal 6.4.89. G.L.J. 7:17.]
33. Accordingly the appeal against conviction is dismissed.

G R Rowland
28th October 2004