

MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981
(Article 146; Rule 160)

CASE STATED BY MAGISTRATES' COURT

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL BY WAY OF CASE STATED UNDER THE
MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

BETWEEN:

Superintendent R D Fleming

Complainant/Appellant

AND

Catherine Mary Mayne

Defendant/Respondent

Case stated Brian P McElholm, Resident Magistrate, in respect of an adjudication at the Magistrates' Court sitting at Enniskillen in the county court division of Fermanagh and Tyrone on the 14th day of December 1998.

1. On the 14th day of December 1998 the Defendant/Respondent appeared before Fermanagh Magistrates' Court sitting at Enniskillen to answer a complaint that she, on the 5th day of April 1998 at Castle Street, Enniskillen in the county court division of Fermanagh and Tyrone drove a mechanically propelled vehicle on a road or other public place when unfit to drive through drink or drugs contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995.

2. I heard the complaint on the 14th day of December 1998. The Defendant/Respondent's Solicitor indicated that she would not be contesting the charge and would plead guilty but that he would be making a case for "special reasons" which would entitle me not to order her disqualification from driving.

3. No witnesses were called by the prosecution and I was not referred to any tendered evidence but the Prosecuting Inspector read out a summary of the prosecution case to which the Defence raised no objection. The Defendant/Respondent gave evidence and was cross-examined. I found the following facts:-

(a) On Sunday the 5 April 1998 at approximately 2.41am Constable Maxwell and Reserve Constables Lindsay and Walker were on mobile patrol in the area of Enniskillen town. They observed the Defendant/Respondent drive her motor vehicle the wrong way up a one way street, namely Church Street, thereby contravening a "No Entry" sign.

Dispatched to the Applicant
on the 16th day of June 1999

[Signature]
Clerk of Petty Sessions

They followed the said vehicle and stopped it in Darling Street.

- (b) On speaking to the Defendant/Respondent Constable Maxwell detected a smell of intoxicating liquor. She was arrested and taken to Enniskillen RUC Station where the evidential breath testing procedure was carried out. The Defence accepted that this procedure was fair and lawful and raised no objection whatsoever.
- (c) The lower of the two evidential breath specimens read 60 milligrams of alcohol in 100 millilitres of breath.
- (d) The Fort Lodge Hotel is approximately one mile from Darling Street.

4. The Defendant/Respondent gave the following evidence:-

- (a) She stated that she was 26 years old and single on the 5 April 1998. She had travelled from Carrickfergus with her boyfriend to Enniskillen on the evening of the 4th April 1998. They booked into the Fort Lodge Hotel.
- (b) During the course of the evening the boyfriend consumed alcohol and in the opinion of the Defendant/Respondent got progressively drunker. Early in the evening she was assaulted in the hotel bedroom by her boyfriend, being pushed and shoved about the room. She stated that she sustained bruising.
- (c) He subsequently apologised for his actions and persuaded the Defendant/Respondent to join him in the downstairs bar for a drink.
- (d) She consumed three ordinary measures of pernod mixed with coca-cola.
- (e) Her boyfriend started an argument and began to act in a nasty and aggressive manner. The Defendant/Respondent feared for her physical safety.
- (f) Hotel staff intervened and while the Defendant/Respondent returned to her room they ejected the boyfriend from the premises.
- (g) On returning downstairs the Defendant/Respondent was informed that her boyfriend was barred from the premises and would not be readmitted.
- (h) The Defendant/Respondent was persuaded by her boyfriend to go outside to the car park to talk things over. Whilst there she was again seriously assaulted. He then made off and


disappeared from sight. She did not see him again after that and she did not know where he spent that night or how he got back to Carrickfergus.

- (i) She tried to gain admittance to the hotel but all doors were locked and she could not attract anyone's attention.
- (j) After some undefined time she gave up trying to get back into the hotel. She got into her car and drove off hoping to find alternative accommodation nearby.
- (k) The Defendant/Respondent stated that she had never been to Enniskillen before and was unfamiliar with the traffic system. She stated that she was upset and confused. She stated that her boyfriend had never assaulted her before although he had on occasion been "rough" in his manner.
- (l) She denied that she had set out to look for her boyfriend and indeed stated that she wished to get away from him. She stated that she had no intention of driving at all until she found herself alone in the car park. She stated she had only driven for a few minutes before being stopped by the police.
- (m) The Defendant/Respondent accepted that she did not tell Enniskillen police at the time about the alleged assault but stated that she did report the matter to police in Carrickfergus who eventually decided not to pursue any charge against her boyfriend.
- (n) The Defence submitted medical reports from Dr L Small dated 26 August 1998 and Dr C H G Gould dated 4 December 1998 which were read to the court and admitted in evidence without formal proof by agreement with the Prosecuting Inspector. Likewise certain photographs purporting to show the extent of the Defendant/Respondent's injuries were handed in.
- (o) I was not referred to any authorities.
- (p) After hearing short submissions from the Defendant/Respondent's solicitor and from the Prosecuting Inspector I imposed a fine of £100 and imposed three penalty points, declining to impose an order of disqualification.

QUESTION

5. The question for the opinion of the Court of Appeal is:-
Whether I was correct in law to hold that on the basis of the evidence and information which I heard, there existed special reasons which entitled me to think fit not to order the Defendant/Respondent, who had pleaded guilty to an offence of driving a mechanically propelled vehicle on a road when unfit through drink or drugs, contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995, to be disqualified in accordance with Article 152(1) of the Road Traffic (Northern Ireland) Order 1981 as substituted by Article 96 of the Road Traffic (Northern Ireland) Order 1995.
6. The following documents and exhibits are attached to this case stated:-
- (a) Summons to the Defendant to answer the complaint.
 - (b) Medical Report dated 26 August 1998 - Dr L Small.
 - (c) Medical Report dated 4 December 1998 - Dr C H G Gould.
 - (d) Photographs.
 - (e) Certificate of Order.
 - (f) Application to Court to state a case.

Dated this 16 day of June 1999


RESIDENT MAGISTRATE

15/6 - NOT done
Use of
* 16/6 - NOT done
17/6 - NOT done

SUMMONS TO DEFENDANT TO ANSWER COMPLAINT

89

R D FLEMING, ESQ
ENNISKILLEN
Complainant
Catherine Mary MAYNE
9 Woodlawn Avenue
Carrickfergus
DOB: 27.11.71
Defendant

Petty Sessions District of
Fermanagh
County Court Division of
Fermanagh and Tyrone

7/9.

WHEREAS a complaint has been made before me that on the 5th day of April 1998 at Castle Street, Enniskillen in the said County Court Division you the said defendant drove a mechanically propelled vehicle on a road or other public place when unfit to drive through drink or drugs contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995.

£100.
3pp.
Special reasons
Medical evidence

Prots. 5/10.
Change of solicitor
2/11
16/11
for completion
med. evidence.

THIS IS TO COMMAND YOU to appear as a defendant on the hearing of the said complaint at The Courthouse, Enniskillen on Monday the 27th day of July 1998 at 10.30 o'clock in the forenoon, before a Magistrates' Court of the said County Court Division.

Dated this 22 day of May 1998 14/12.

J. J. Regan
Justice of the Peace
[Clerk of Petty Sessions]

Endorsement in Respect of an Offence Involving Obligatory or Discretionary Disqualification

The offence in respect of which you are charged involves obligatory or discretionary disqualification for holding or obtaining a driving licence. You are therefore required either to:

- (a) deliver the licence and its counterpart to the court; or
- (b) bring the licence and its counterpart to court with you at the hearing.

If you are convicted of the offence you will be required to produce your licence and counterpart in court. Failure to do so is an offence punishable summarily.

- NOTE:
- 1. If you have applied for a new licence but not yet received it, you must be able to satisfy the court of the truth of this.
 - 2. If you have surrendered your licence and its counterpart on receiving a fixed penalty notice, the receipt issued must be delivered or produced to the court.