

### Judgment

The appellant was charged on the 19th September 1987 with an offence contrary to sections 3 and 6 of the Forgery and Counterfeiting Act 1981. The particulars of the charge were as follows:-

"that you at Stanley on the 15th August 1987 did use a certain instrument, namely a St Helena driving licence, serial number 19233, which was false and which you knew to be false, with the intention of inducing a certain person, namely Diane McGill, to accept it as genuine and by reason of such acceptance to do a certain act, namely to issue a Falkland Islands driving licence in respect of a class of vehicle which you were not qualified to drive, to the prejudice of the Public."

The appellant appeared before the Senior Magistrate on the 30th September 1987 and pleaded Not Guilty to the charge. At his trial on the 28th October 1987 he was found guilty as charged and sentenced to a fine of £200. His St Helena driving licence and the application form for a temporary Falkland Islands driving licence (Exhibits P2 and P1 respectively in the Senior Magistrate's Court) were forfeited.

The facts of the case are as follows:

The appellant is a St Helenan employed at Mount Pleasant. It appears from his evidence that before his arrival in the Falkland Islands earlier this year he had been an officer in the St Helena Police Force for over seven years. The appellant in evidence said that soon after his arrival he went to the Military Police at Mount Pleasant to inquire how he could obtain a Falkland Islands driving licence. It appears that he was given a form of application for a driving licence - Form C, which is entitled "Application for a Driver's Licence/Temporary Driver's Licence." It appears that what the appellant required was a temporary driver's licence. He completed the application form on, he says, the advice of the Military Police officer, and handed the completed form and his St Helena driving licence to the officer who forwarded them to Police Headquarters at Stanley. There Mrs McGill, a civil servant employed at Police Headquarters, checked the appellant's application Form C and his licence. She observed that in his application form the appellant had applied for a temporary driver's licence to drive "Motor Cycle/Land Rover." On checking the appellant's licence she found that he was licensed to drive motor vehicles of classes "E C and F only." It appears from the licence (Exhibit P2) that classes E and F apply to Motorcycles up to and including 250cc (Class E) and over 250cc (Class F). Class C relates to Public Service Vehicles of gross weight not exceeding 4000lbs (1800kg), including all cars, taxis, landrovers and transit buses. Mrs McGill thought it odd that the licensee should be allowed to drive public service vehicles but not ordinary cars or lorries (Classes A and B), she found it equally odd that the letters appearing in the licence should not be in alphabetical order, and on closer examination she suspected that the letter C had been inserted by someone other than the St Helena licensing officer. It appears therefore that she reported the matter to her senior officer as a result of which the appellant was charged.

The appellant in his defence said that he had not inserted the C in his licence for 1986/87 or in the two earlier annual driving licences appearing in his driver's licence book. He said that he knew he was only licensed to drive motorcycles and that what he had intended in completing his application Form C was to apply for a temporary driver's licence for all classes of motorcycles but a provisional licence for a landrover to enable him to take a test to drive a landrover. He conceded that the letter C appearing in his St Helena licence for the last three years was a forgery, but he alleged that this must have been perpetrated by a fellow police officer in the St Helena Police Force who had a grudge against him. He produced a copy of a letter dated the 26th September 1987 addressed to the Government Secretary, St Helena, asking for confirmation that a certain Sgt Stevens had threatened him (the appellant). No reply to this letter had been received at the date of the appellant's trial or to date. The appellant said that he had never noticed that the letter C had been inserted in his driver's licences for the last three years.

As can be seen from Exhibit P1 - the application Form C - there is nothing on that form to show that the appellant was applying for a provisional licence to drive a landrover, for which by his own admission he had no licence to drive. The appellant said that he had completed the form on the advice of the Military Police officer from whom he had obtained it.

The learned Senior Magistrate found that he was unable to accept the appellant's evidence that he had not noticed that the letter C had been inserted in his licences over three years or that in completing his application form for a temporary licence to drive motorcycles and landrovers he had in fact intended to apply for a temporary licence only to drive motorcycles and a provisional licence to drive landrovers in order to enable him to take a test to drive landrovers. He found that the appellant had submitted his forged licence to the Falkland Islands Police authorities knowing that it was false and intending the authorities to accept it as genuine and accordingly found the appellant guilty as charged.

In his notice of appeal the appellant submits

- (1) that the Senior Magistrate misdirected himself on the ground that there was no sufficient evidence that the appellant knew his licence to be false in any material particular;
- (2) that the Senior Magistrate misdirected himself in finding that the appellant must have been aware as a police officer of over seven years standing that his licence had been tampered with, and that the Senior Magistrate should have accepted the evidence of the appellant that he had not looked at his licence there being no evidence to the contrary;
- (3) that the Senior Magistrate was not justified in rejecting the appellant's evidence that the appellant in completing Form C had expected to be issued with a temporary licence to drive motor cycles and a provisional licence to drive landrovers, there being no evidence to the contrary.

Having considered the submissions of the appellant and his counsel I find no grounds for interfering with the finding of the learned Magistrate on this point. No question of law arises here. The matter was entirely a matter of fact in respect of which the learned Magistrate, who saw and heard the witnesses, is clearly the best judge.

At the hearing of his appeal, however, Mrs McIlroy for the appellant, cited to me the recent English case of R v Garcia reported in "The Times" of the 3rd November 1987.

Mrs McIlroy pointed out that the Senior Magistrate, having found (as he did) that the appellant had used his driver's licence, knowing it to be false, with the intention of inducing Mrs McGill to accept it as genuine, should then have gone on to consider whether, in accordance with section 3 of the 1981 Act, the appellant intended Mrs McGill "by reason of so accepting it (the licence) to do or not to do some act to his (her) own or any other person's prejudice."

As Mrs McIlroy pointed out - and this was not disputed by the learned Attorney-General - it was quite clear from R v Garcia that it was an essential ingredient of the offence that the person charged, in using the false instrument, should also have a secondary intent that the person accepting the false instrument should act to his own or someone else's prejudice, as set out in section 3 of the Act. It was equally clear from the record of the lower court that the learned Senior Magistrate had made no finding, as he was bound to do, as to whether or not the appellant had had the secondary intent described in section 3 of the 1981 Act.

Mrs McIlroy conceded, however, that she was not pursuing this point, as it was quite clear on the facts of the case and on a reading of section 10(1)(c) of the Act, that the learned Magistrate, having found that the appellant had the first intent, namely, to use his licence, which he knew to be false, with the intention of inducing somebody to accept it as genuine, would in this case undoubtedly have gone on to find that the appellant had the second intent, namely, that the person accepting the false instrument should do some act to his own or any other person's prejudice.

I agree with Mrs McIlroy that in the circumstances of this case the failure of the learned Magistrate to make a finding as to the secondary intent, an essential ingredient of an offence under section 3 of the Act, should not be grounds for ordering a retrial.

Section 3 of the Forgery and Counterfeiting Act 1981 provides as follows:

"3. It is an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice."

Section 10(1)(c) of the Act provides as follows:

"10.(1) Subject to subsections (2) and (4) below, for the purposes of this Part of this Act an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs -  
... (c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty."

(Subsections (2) and (4) of section 10 are irrelevant in this case.)

It would seem quite clear that in this case the learned Magistrate having found that the appellant used his licence, knowing it to be false, with the intention of inducing the licensing authority to accept it as genuine would have found that the appellant had the further intent to induce the authority to act to its prejudice, that is, to accept the false licence as genuine in connection with its performance of its duty to issue temporary driver's licences.

I am quite satisfied that the appellant had such a secondary intent and that he has suffered no prejudice in this case in that the learned Senior Magistrate found him guilty of the offence charged without coming to a specific finding in respect of such secondary intent.

There is a further matter, however, to which it appears to me consideration should be given in a case of this sort. This relates to the charge. It appears to me that on the facts of this case the appellant's intention was to induce the Falkland Islands licensing authority (which I take to be the Chief Police Officer) to accept his licence as genuine. It would seem that the appellant was not acquainted with Mrs McGill nor did he personally present his licence to her. It would seem to me therefore that the person named in the charge in this case should not have been Mrs McGill but the Chief Police Officer, if that officer is indeed the licensing authority, and that, at the end of the particulars of the offence, it should have been the Chief Police Officer who was alleged to have been prejudiced rather than "the Public" as stated in the charge.

If I am right, and this is not mere hair-splitting, I find that the appellant was in no way prejudiced by this error in the particulars of the charge - if error it be - and see no reason for interfering with the learned Magistrate's decision on this account.

Accordingly, for the reasons set out above, I dismiss this appeal and affirm the conviction and order of the Senior Magistrate.



Chief Justice