Bills Committee on
Road Traffic (Amendment) Bill 2000

Application of the Test of Dangerous Driving

Introduction

This paper sets out the Administration's response to questions raised by Members of the Bills Committee on the implementation of the dangerous driving provision in the UK and the circumstances under which a driver would be regarded as driving dangerously.

Background

2. At the first meeting of the Bills Committee held on 16 March 2000, Members requested the Administration to provide the following information -

(a) the UK experience in implementing the dangerous driving provision;

(b) details of the UK cases illustrating the types of actual driving behaviour which are caught under the dangerous driving provision; and

(c) relevant cases in the UK to support that the defendant's awareness of the possible risks would be one of the factors which the Court would consider in determining whether a driver had driven dangerously when benchmarked against the standard of a competent and careful driver.

UK Experience

3. In the UK, the main road traffic offences were reformed in 1991 to crack down on bad driving, and "reckless driving" was replaced with "dangerous driving" in that exercise. It was recognized that it had not always proved possible to secure convictions for the offences of reckless driving and causing death by reckless driving because of the need for juries to be satisfied as to the driver's state of mind at the time the act of bad driving took place. New driving offences of "dangerous driving" and "causing death by dangerous driving" were introduced as replacement.

4. The test for "dangerous driving" was made more objective by benchmarking the behaviour against the driving standard expected of a competent and careful driver. The UK's definition for dangerous driving is at Annex A. In brief, it has two ingredients -

(a) a standard of driving which fell far below that expected of a competent and careful driver; and

(b) it would be obvious that the driving behaviour would carry a potential or actual danger of physical injury or serious damage to property.

5. The determination of what amounts to driving dangerously is by means of a test which concentrates upon the nature of the driving rather than the defendant's state of mind. So far as the standard of driving is concerned, the test to be applied is objective in nature. The intention of the amendment was that the standard of driving should be judged in absolute terms, taking no account of factors such as inexperience, age or disability. However, such factors may be relevant in sentencing. It was not intended that the driver who merely makes a careless mistake of a kind which any driver may make from time to time should be regarded as falling far below the expected standard. This serves as a qualitative distinction between "dangerous driving" and "careless driving".

6. The UK authority has further indicated to the Administration that they have encountered no major difficulties in enforcing the provision and prosecuting offenders for dangerous driving over the past nine years.

UK's Application of the Test of Dangerous Driving

7. The following cases are used to illustrate the application of the test of dangerous driving in the UK -

(a) Tippick v Orr (1994): A driver travelled at a recorded speed of 114 miles per hour on a dual carriageway subject to a 70 miles per hour speed limit. Visibility was excellent, the car was in good condition and the road condition was dry. The court held that the driver was properly convicted of dangerous driving because there were potential hazards like other vehicles turning on the carriageway at the two road junctions lying ahead, deer crossing the road, etc.

(b) R v Roberts and George [1997]: A tipper truck driver and his employer appealed against the conviction of causing death by dangerous driving. A wheel of the tipper became detached and hit another vehicle, killing its driver. The prosecution argued that the truck was in a dangerous condition because of lack of proper maintenance, and that should have been obvious to the driver and employer. The defendant argued that the wheel nuts could work themselves loose in normal use, and that that could happen without any indication that anything was wrong and that the defendant had checked the wheels nuts regularly and would look at the wheels daily. The appeal against conviction was allowed.

(c) R v Ash [1998]: A driver, with a blood alcohol concentration well in excess of the legal limit, drove a vehicle straddling the central white line and collided with an oncoming vehicle which ran into a minibus, whose driver was killed. The driver was convicted of causing death by dangerous driving.

Details of the above cases are attached at Annex B.

Circumstances shown to be within the knowledge of the Defendant

8. As explained in paragraph 5 above, the determination of what amounts to driving dangerously is by means of a test which concentrates upon the nature of the driving rather than the defendant's state of mind. While the offence of dangerous driving is absolute in the sense that it is unnecessary to show that the defendant's mind was conscious of the consequences of his action in determining whether it would be obvious to a competent and careful driver that the driving behaviour would carry a danger of physical injury or serious damage to property, the court must have regard to any circumstances shown to have been within the defendant's own knowledge.

9. For example, in the case of R v Marison [1996], a diabetic driver while driving his car veered on to the wrong side of the road and collided head-on with an oncoming car, killing the driver of that car. During the previous six months, the defendant suffered several hypoglycaemic episodes some of which involved losing consciousness without warning. Three months before the fatal accident, he lost control of his car in such an episode; and he required medical attention for an episode ten days before the accident. The trial judge ruled that the defendant must have been aware of the risk that he might have a hypoglycaemic attack while driving and that constituted circumstances of which he could be expected to be aware within the meaning of the Road Traffic Act.

10. The simple fact that a person who has taken pain killer, is tired or suffers from a disease and drives would not in itself constitute dangerous driving. There would have to be two tests. First, the actual driving behaviour is dangerous, e.g. he drives in excessive speed, or he drives on the wrong side of the road. Second, the court shall have regard to all relevant circumstances shown to have been within the knowledge of the defendant that it is obvious to a competent and careful driver that driving in such a state is dangerous. Given the reaction to pain killer and disease varies from person to person, it would be difficult to argue that it is obvious to a competent and careful driver that driving in such a state is dangerous.

30 March 2000

Annex A

UK's Definition for Dangerous Driving
As in the Road Traffic Act 1991

Causing death by dangerous driving

1. A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

Dangerous driving

2. A person who drives a mechanically propelled vehicles dangerously on a road or other public place is guilty of an offence.

2A. (1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if) ---

(a) the way he drives falls far below what would be expected of a competent and careful driver, and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 1 and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above "dangerous" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circurnstances of which the accused could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) above the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

Trippick v Orr

HIGH COURT OF JUSTICIARY

THE LORD JUSTICE GENERAL (HOPE), LORDS COULSFIELD AND CAMERON OF LOCHBROOM

20 JULY 1994

Justiciary – Statutory offence – Dangerous driving – Driving at 114 mph on 70 mph road with minimal potential hazards – Whether dangerous driving – Road Traffic Act 1988 (c 52), ss 2 and 2A (1).

An accused person was charged on a summary complaint with driving dangerously and at excessive speed, contrary to s 2 of the Road Traffic Act 1988, as amended. The accused drove his motor car at 114 mph on a dual carriageway with a speed restriction of 70 mph. His was the only car on the road and visibility and road conditions were good but there were two junctions from which cars could enter the road and there were potential hazards from a sudden puncture, deer crossing the road and loose road chippings breaking the car windows. The sheriff considered that these were minimal risks but that the accused had fallen far below the standard of the competent and careful driver because of the potential risks and the grossly excessive speed which taken together created a potential danger of injury to persons or property. The accused was convicted and appealed.

Held, that the question was one of fact and degree for the sheriff and since the findings did not negative all of the potential hazards, the sheriff's conclusion on the evidence was one which was open to him (p 275E-F); and appeal *refused.*

Summary complaint

A Michael John Trippick was charged at the instance of William W Orr, procurator fiscal, Inverness, on a summary complaint which libelled the following charge:

"On 23 July 1993, on a road or other public place, namely on the Perth to Inverness road at Daviot, District of Inverness, you did drive a mechanically propelled vehicle, namely motor car registered number H996 AEU, dangerously and at an excessive speed, namely 114 mph: contrary to the Road Traffic
B Act 1988, s 2, as amended".

The accused pled not guilty and proceeded to trial. After trial the sheriff (W J Fulton) found the accused guilty.

The accused appealed by way of stated case to the High Court against the decision of the sheriff. The facts appear from the opinion of the court.

Statutory provisions

C The Road Traffic Act 1988, as amended, provides inter alia:

"2A.—(1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if) — (a) the way he drives falls far below what would be expected of a competent and careful driver, and (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous."

D **Cases referred to**

Abbas v Houston, 1993 SCCR 1019.
Brown v Orr, 1994 SCCR 668.
Jansch v Orr, High Court of Justiciary, 31 March 1994, reported as an appendix at 1994 SCCR 742.

Appeal

The sheriff posed the following questions for the opinion of the High Court:

E (1) On the facts admitted or proved, was the driving of the appellant dangerous in terms of the definition of dangerous driving specified in s 2 of the Road Traffic Act 1988, as amended?

(2) Was I entitled to convict the appellant of a contravention of the said s 2?

The appeal was heard before the High Court on 20 July 1994.

F

Eo die the court *answered* questions 1 and 2 in the *affirmative* and *refused* the appeal.

The following opinion of the court was delivered by the Lord Justice General (Hope):

OPINION OF THE COURT.—The appellant is Michael John Trippick who was found guilty in the sheriff court at Inverness of driving dangerously, contrary to s 2 of the Road Traffic Act 1988, as amended. The charge was that on 23 July 1993 on a road or other public place, namely on the Perth to Inverness road at Daviot, District of Inverness, he did drive a G
mechanically propelled vehicle at an excessive speed, namely at 114 mph. The section of road to which the charge related was a dual carriageway to which the 70 mph restriction applied. There was no alternative charge on this complaint of driving at an excessive speed. The sheriff decided to fine the appellant the sum of £450. He disqualified him for a period of one year as he was obliged to do by the statute, and he ordered him to resit the test of competence to drive. An application was then made for a stated case in H
which two questions were raised. The first was whether the sheriff was entitled to convict the appellant of dangerous driving. The particular question was whether the driving of the appellant was dangerous within the meaning of the definition of that expression, in terms of s 2A of the Act. The other point which is taken is an appeal against sentence.

The sheriff has described in his findings of fact how it was that this offence was committed. On 23 July 1993 at about 1.30 pm, police officers were parked in I
a layby off the northbound carriageway of the A9 at Daviot. About 600 or 700 yards south of where they were parked was the crest of a hill. The A9 road proceeds to run downhill for some 500 yards or thereby from the crest. It then curves to the right at the bottom of this hill, for a driver driving northwards on the road, and crosses a river. It then proceeds uphill for about 500 yards curving to the left on to a straight and level stretch. The police had the advantage of having a 500 millimetre white Vascar square on the carriage- J
way, and they set up this equipment with a view to measuring the speed of vehicles which were travelling north on the stretch of road, downwards from the crest of the hill towards the crossing over the river. Two other features of the layout of the road require to be mentioned, bearing in mind that the stretch of road with which the sheriff was concerned was a dual carriageway road but not a motorway. About halfway along the downhill stretch from the crest, that is to say about 250 yards from the crest, there was a junction K
on the left hand side of the road for the driver travelling north. There was a gap in the central reservation opposite this junction for southbound traffic to gain access to this road. Approximately 100 yards south of the bridge, and this was about 600 yards away from the crest and beyond the Vascar square, there was a slip lane from the offside northbound carriageway and a gap in the reservation with a junction in the road leading to Moy. The police became aware at about 1.30 pm of a Toyota motor car coming over the brow L
of the hill to the south of their position. It was travelling north in the offside lane of the dual carriageway and it stayed in that carriageway until it was stopped by the police officers. The constables noted that the car was travelling at high speed. Steps were then taken to activate the Vascar device and the speed of the vehicle was taken over a measured distance and registered by the device as being 114.3 mph. The appellant who was the driver of the car responded to signals from the police car which pursued him from the layby

to stop his vehicle, and in due course he was charged with an offence under s 2 of the Act and with an alternative contravention of the provision in the Road Traffic Regulation Act about speeding.

The question for the sheriff in the light of the evidence before him was whether this was a case of dangerous driving. The expression with which he had to concern himself is set out in s 2A (1) of the 1988 Act, as amended, in these terms: [his Lordship quoted its terms and continued:]

The sheriff considered both branches of the definition in the light of the evidence to which he had listened about the circumstances of the stretch of road over which the speed of the appellant's vehicle was measured. He noted that there was nothing inherently dangerous in the manner of the appellant's driving apart from his speed. He noted that for a driver in his position visibility ahead on the stretch of the A9 road was excellent, that there was clear visibility for the two road junctions and that there was clear visibility of the gaps in the central reservation opposite each of these junctions. He noted also that the appellant's car was in excellent condition, as indeed was the road surface since the road was dry and the weather conditions were good. On the other side of the balance, however, he noted that there were certain potential hazards for a driver in the appellant's position. He found that these included the possibility of traffic coming on to the northbound carriageway of the A9 from either of the two road junctions, the possibility of a tyre blowing out and the consequent problems of control exacerbated by travelling at a speed of 114 mph, the possibility of loose stone chippings damaging the windows of the car and the possibility of deer coming on to the road. These were the findings in the light of which he then proceeded, in the course of the exercise which he has described in his note, to assess the possible dangers or potential dangers against the speed at which the appellant was travelling. At the end of the day he held that both branches of the *definition* in s 2A were satisfied, and for that reason he convicted the appellant of the offence.

When he introduced the appeal today, the solicitor advocate who appeared for the appellant informed us that his understanding was that the Crown were not supporting this conviction. The learned advocate depute later confirmed that that was the position. We were not satisfied that the sheriff had taken a decision which could not be supported, however, and for that reason we invited the solicitor advocate to address us on the law in this case and also on the facts, and we were also addressed by the learned advocate depute.

In the course of his address the solicitor advocate for the appellant submitted that the sheriff had in effect negatived the potential dangers to which he had referred in his findings. The whole conditions had to be looked at, said the solicitor advocate, bearing in mind that there was nothing inherently dangerous in the driving itself and bearing in mind also the clear view and the generally good conditions on the stretch of road along which the appellant was driving. The sheriff had addressed his mind to the possible or potential dangers but in the end of the day, as his note set out, he had concluded that these could be generally regarded as hazards of minimal risk only. He pointed to the sheriff's decision that the standard of the appellant's driving had fallen far below what could be expected of a competent and careful driver. He submitted that that finding was without proper support, in the light of the view which the sheriff had taken on the nature of the potential dangers. He also submitted that it could not be said in the light of the sheriff's assessment of these potential dangers that it would have been obvious to a competent and careful driver that driving in that way would be dangerous.

In support of his submissions he drew our attention to two recent decisions of this court, as well as to the observation in *Abbas v Houston*, 1993 SCCR at p 1022E that cases of driving at grossly excessive speed might well result in a conviction on the ground that the driver was driving dangerously. But he stressed that speed in itself was not the test of dangerous driving. The purpose of the reference to *Jansch v Orr* was to illustrate that point and to show that, in a case where a sheriff had reached a view that there were significant features along the road which amounted to potential dangers, the sheriff would be entitled to take the view that that was a case of dangerous driving within the definition. On the other hand in *Brown v Orr*, the court had taken a different view of a decision by a sheriff to convict under s 2 of the Act, as amended, on the view that the sheriff had effectively negatived all the potential dangers. All the sheriff was left with were speculative dangers and since the potential dangers were effectively negatived, it could not have been said to have been obvious to a competent and careful driver that driving in that way would be dangerous.

The advocate depute in his submissions stressed that the dangers had to be obvious to a competent and careful driver. Dangers which did not measure up to that standard were not sufficient, and under reference to the remarks both in *Abbas v Houston* and *Jansch v Orr* he also stressed that speed in itself was not the measure as to whether the statutory test was satisfied. We understood him to accept, however, that if the sheriff's note could be read as amounting to an exercise of assessment which involved comparing the potential dangers with the effects of the speed at which the appellant was driving, then the question would become a question of fact and degree for the sheriff. At the end of his argument, therefore, the advocate depute, as we understood him, was accepting that, if we were to reach that view on a proper construction of the sheriff's note, this was a case where the sheriff's decision could be supported as a decision properly taken in the light of the definition in the statute. The critical question in this case, therefore, comes to be what we are to make of the way in which the sheriff has approached the facts in this case. On the one hand there are findings in the case which

describe potential hazards for a driver in the appellant's position. There are, of course, findings to the effect that conditions were excellent. But in this case, in view of the definition, what we are concerned with is the potential hazards which might be said to give rise to danger. The sheriff also had before him the speed which was registered at 114.3 mph. He had a calculation that the safe minimum stopping distance of a car travelling at that speed in good conditions was 155 yards, and he also had information before him that about 250 yards below the crest, there was a junction leading to Fort Augustus. In his discussion of these features, the sheriff proceeded to assess the significance of them, on the understanding that vehicles on this dual carriageway were entitled lawfully to be travelling at a maximum speed of 70 mph. He refers to that in his note. We note also that he talks about the risk of deflation of a tyre at 70 mph. The discussion, as we follow it, in this part of the note amounts to an assessment of the potential risks in normal conditions, given that the speed limit on this stretch of road was 70 mph. The conclusion which he reaches in this passage is that the potential hazards could generally be regarded as minimal risk but, as we read his note, this was all on the assumption that the driver is driving at a speed not exceeding 70 mph.

The sheriff comes to examine the speed at which the appellant was travelling. This, he says, was a different matter entirely. It seems to us that he is now looking at the other side of the equation, and assessing the potential hazards in the light of the speed at which the appellant was travelling in order to test the two branches of the statutory definition against all the circumstances. What he concludes is that the present case involved the appellant travelling at a grossly excessive speed albeit in circumstances of minimal potential danger, and that the statutory tests were satisfied. In our opinion the approach which the sheriff took to the facts of this case was a legitimate one in the light of the definition which he had to consider. We do not accept the appellant's solicitor advocate's point that the findings negatived all the potential dangers. As we understand both the findings and the sheriff's note, he was satisfied that there were potential hazards on this stretch of road which ought to be taken into account. What then remained was a question of fact and degree, which was the process of assessing their significance in the light of the grossly excessive speed — a speed close to twice the statutory maximum — at which the appellant was travelling, and we are not persuaded that the conclusion which he reached as a result of that assessment was one which was not open to him to reach on the facts. For these reasons we have decided that the only course we can properly take is to refuse the appeal against conviction and we shall therefore answer the first two questions in the case in the affirmative.

There was an appeal against sentence, but the appellant's solicitor advocate very properly indicated that he could not quarrel with the amount of the fine which the sheriff imposed. The disqualification and the order to resit the driving test were mandatory in this case in view of the terms of the Act, and we shall therefore refuse the appeal against sentence.

For Appellant, Belmonte (Solicitor Advocate), McKay & Norwell, WS (for South Forrest, Inverness) – Counsel for Respondent, Peebles, QC, A D; Solicitor, J D Lowe, Crown Agent.

PWF H

R v Roberts and George

The definition of obviousness set out in *R. v Strong* above was adopted by the Court of Appeal in *R. v Roberts and George* [1997] R.T.R. 462 when dealing with the appeals against conviction of causing death by dangerous driving of a tipper truck driver and his employer. A wheel of the tipper became detached and hit another vehicle, killing its driver. The prosecution argued that the truck was in a dangerous condition because of lack of proper maintenance, and that should have been obvious to both men. The defence argued that the design of the wheel assembly was inherently dangerous and that the wheel could come off without there being any indication that anything was wrong. In accordance with his employer's instructions, the driver undertook a daily visual inspection of the wheels and a weekly physical check of the wheel nuts. Allowing the appeals, the court stated that more might be expected of a professional driver than an ordinary motorist. Where a driver was an employee, it would be important to consider the instructions given by the employer. Generally speaking it would be wrong to expect him to do more than he was instructed to do, provided that the instructions were apparently reasonable. In the instant case the driver could not have been expected to have done more than he was told to do by his employer, since there was no evidence before the jury which could have entitled them to conclude that he should have appreciated that his instructions were inadequate.

R. v. ASH

COURT OF APPEAL (Lord Justice Roch, Mr Justice Laws and Mr Justice Butterfield); October 2, 1998

DANGEROUS DRIVING

Causing death by

Evidence of alcohol consumption—Single blood specimen showing high level of alcohol—Whether admissible—Road Traffic Offenders Act 1988, s. 15—Police and Criminal Evidence Act 1984, s. 78.

Section 1 of the Road Traffic Act 1988 [*as substituted by section 1 of the Road Traffic Act 1991*] provides:

"A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence."

Section 15 of the Road Traffic Offenders Act 1988 [*as amended by section 48 of and paragraph 87 of Schedule 4 to the Road Traffic Act 1991*] provides:

"(1) This section and section 16 of this Act apply in respect of proceedings for an offence under section 3A, 4 or 5 of the Road Traffic Act 1988 (driving offences connected with drink or drugs) . . . (2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases (including cases where the specimen was not provided in connection with the alleged offence), be taken into account and . . . it shall be assumed that the proportion of alcohol in the accused's

breath, blood or urine at the time of the alleged offence was not less than in the specimen . . . (5) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless—(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and (b) the other part was supplied to the accused."

Section 78(1) of the Police and Criminal Evidence Act 1984 provides:

"In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

The defendant was driving with a blood alcohol concentration well in excess of the legal limit and collided, while straddling the central white line, with an oncoming vehicle which ran into a minibus, whose driver was killed. The defendant himself was very seriously injured. He had lost so much blood that it was possible to take only one forensic sample rather than the usual two. He was prosecuted for causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988. At his trial he submitted that the blood sample ought not to be admitted in evidence, on the basis that, if he had been tried for driving with excess alcohol under section 3A, 4 or 5 of the Road Traffic Act 1988, the sample would have been inadmissible by virtue of section 15 of the Road Traffic Offenders Act 1988. It was also submitted that to admit the sample in evidence would be unfair by virtue of section 78 of the Police and Criminal Evidence Act 1984. The defendant was convicted and sentenced to four years' imprisonment, disqualified for driving for five years and thereafter required to take a driving test. The judge refused the defendant's application for leave to appeal.

On the defendant's renewed application for leave to appeal against both conviction and sentence:

Held, dismissing the application, that section 15 of the Road Traffic Offenders Act 1988 was on its face limited so as to apply only in relation to proceedings under section 3A, 4 or 5 of the Road Traffic Act 1988 (p. 351C); that the provision in section 15(2) which required the court to assume that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen was specific to offences where the taking of drink or the quantity of drink taken were constitutive of the offence itself (p. 351C–D); that section 15 was concerned to regulate the proof of offences of that kind and no other (p. 351C–D) and could not be extended so as to cover cases under section 1

of the Road Traffic Act 1988 (p. 351E); that by necessary implication it could not be said that the use made of the sample at the defendant's trial was unfair and should have been excluded under section 78 of the Police and Criminal Evidence Act 1984 (p. 351E); that in a prosecution under section 1 of the Road Traffic Act 1988 evidence of drink taken was admissible where the amount of drink was such as adversely to affect the quality of the defendant's driving or where it would be open to the jury so to conclude (p. 351F–G); and that, despite the defendant's previous good character and the serious injuries he had suffered in the accident, the sentence could not be described as manifestly excessive (p. 352D).

R. v. Woodward (Terence) [1995] R.T.R. 130, CA, followed.

No other case was referred to in the judgment or cited in argument.

Renewed application for leave to appeal against conviction and sentence

The defendant, Ian John Ash, was convicted in the Crown Court at Warrington on December 12, 1997 (Judge Clarke and a jury) of causing death by dangerous driving. He was sentenced on January 16, 1998 to four years' imprisonment and five years' disqualification for driving and required thereafter to take a driving test. His application for leave to appeal against conviction and sentence was refused by the single judge (Holland J.). He renewed his application before the full court.

The facts are stated in the judgment of Laws J.

Donal McGuire for the applicant.

LAWS J. This is a renewed application for leave to appeal against conviction and sentence following refusal by the single judge. The applicant, Ian John Ash, was convicted on December 12, 1997 by a jury in the Crown Court at Warrington of an offence of causing death by dangerous driving. After an adjournment for reports he was sentenced the following month, on January 16, to four years' imprisonment and disqualified for driving for five years and required thereafter to take a test.

The tragic event which gave rise to this prosecution took place at about 7.15 p.m. on Friday, October 11, 1996. The applicant was driving his Rover motorcar on the Runcorn to Widnes bridge. He was driving towards Widnes. It is convenient to state at once that it appears he had consumed so much alcohol that a reading taken from a sample several hours later showed a quantity of alcohol in his blood 48 milligrammes in excess of the legal limit for driving. We mention that at once because the only point that arises upon the conviction application is whether evidence of this fact was properly admitted before the jury.

As for the facts themselves, the bridge was well lit. There are four lanes but no central reservation. The applicant was seen to drive at something like 50 miles an hour, perhaps a little more, perhaps a little less, over the bridge which was controlled by a 40 mile an hour speed limit. He swerved

over the central white line. About 60 metres or so on the Widnes side from the crest of the bridge, whilst straddling the central white line so that half his car's width was into the Runcorn bound carriageway, he collided with an oncoming road sweeper lorry. The lorry went out of control. It collided in its turn with a minibus, whose driver, Mr Green, received very grave injuries to his head and body, as a result of which he died at 5.10 a.m. on Saturday, October 12.

It is necessary to indicate, because it is material to the sentence application, that the applicant himself was very seriously injured and taken to hospital for treatment.

It was at 9.52 p.m. on the evening of the accident that a sample of blood was taken from the applicant by a doctor with his consent. He had lost a good deal of blood. That meant that it was not possible to take enough from him for two samples to be made.

It is not necessary to describe the evidence given in the case at any greater length. There were, of course, a number of witnesses who had been driving on the bridge at that time. The applicant's speed and the movement of his car were described by them. The applicant himself gave evidence. He had a very great deal of driving experience. He in fact had no memory whatever of the journey that he took which led to the fatal accident.

We will say a little bit more about his personal circumstances when dealing with the sentence application, but it is convenient at once to go to the single point taken in relation to conviction.

It was submitted to the trial judge, Judge Clarke, that the evidence concerning the quantity of alcohol in the blood sample should not be admitted before the jury. That submission was made on two bases. The first turned upon the terms of section 15 of the Road Traffic Offenders Act 1988. The second was a submission based upon the well-known provisions of section 78 of the Police and Criminal Evidence Act 1984.

Section 15 provides in part as follows:

> "(1) This section and section 16 of this Act apply in respect of proceedings for an offence under section 3A, 4 or 5 of the Road Traffic Act 1988 (driving offences connected with drink or drugs) . . . (2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases (including cases where the specimen was not provided in connection with the alleged offence), be taken into account and, subject to subsection (3) below, it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen."

It is not necessary to read subsections (3) or (4). Subsection (5) is as follows:

> "Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless—(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and (b) the other part was supplied to the accused."

Mr McGuire on the applicant's behalf submitted, as he submitted to the trial judge, that the restrictive provisions in section 15, which control the use that may be made of a specimen of blood or urine in certain specified proceedings, should be applied in this case. In particular he submits that, if this applicant had been prosecuted for an offence under section 3A, 4 or 5 of the Road Traffic Act 1988, the specimen of blood would not have been admissible on behalf of the prosecution because the provisions contained in section 15(5) were not complied with. He says that, that being so, it is not fair that the evidence of the specimen should, nevertheless, have been allowed before the jury in this extant case, which was, of course, a prosecution under section 1 of the Act of 1988.

This submission, in our judgment, is misconceived. Section 15 is, upon its face, limited so as to apply only in relation to proceedings under section 3A, 4 or 5. Had Parliament intended that its special provisions should apply to a prosecution under section 1, plainly it would have so provided. It is important, in addition, to emphasise that section 15 contains the particular provision set out in subsection (2) requiring the court, subject to certain exceptions, to assume that "the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen". That is a provision specific to offences where the taking of drink and the quantity of drink taken are constitutive of the offence itself.

The section is concerned to regulate the proof of the prosecution case in relation to offences of that kind and no other. The suggestion that upon some kind of equitable ground this court should extend its provision to section 1, for that is what the argument amounts to, is plainly unsustainable. Those considerations also, by necessary implication, deal with the argument that was put forward under section 78 of the Police and Criminal Evidence Act 1984 for, given the particular and limited application of section 15, it cannot be said to be unfair that the sample should have been used in the present case. There is no room here for an argument under section 78 of the Act of 1984.

It is helpful just to recall that *R. v. Woodward (Terence)* [1995] R.T.R. 130, together with earlier authority there cited, makes it entirely plain that in a prosecution under section 1 of the Road Traffic Act 1988 evidence of drink taken is admissible where the amount of drink was such as adversely to affect the quality of the defendant's driving or where, at any rate, it would be open to the jury so to conclude.

In the course of argument Mr McGuire, in answer to a question from Roch L.J. accepted that, if in this present case the applicant had admitted to the police at the scene or shortly thereafter that he had had too much

to drink that night, that admission would be admissible before the jury. The sample in this present case goes to prove precisely the same element of the case as would have been supported by such an admission, namely that this was tragically a case where the driver—the applicant—had taken so much drink as to cause him to drive in the dangerous manner he did. There is nothing in the application relating to conviction, which will therefore be refused.

As regards sentence, Mr McGuire accepts that the term of four years is well within the well-known guideline cases relating to offences of this kind. It is also well known that where an offence of this sort is aggravated by drink the courts have taken a progressively graver view over recent years.

Mr McGuire's submission is that this was a case where there was very pressing mitigation. First there was this man's positive good character. Evidence was called from his superior at his work, who had twice promoted him and who spoke very highly of him. There were letters from British Gas, his employers, and other letters, again showing that he was a man much liked and admired; as we have said, of positive good character.

The second point taken on his behalf is, as we have mentioned in passing, that he was very gravely injured himself. It is perhaps not necessary to go into the details. We have indicated he could not remember the occasion leading to the accident. He had many broken bones—his pelvis was broken in three places, his ribs were damaged, a broken right arm had to be pinned and plated, and there were other injuries.

There was undoubtedly personal mitigation, but this is a case where it is impossible to say, given that the prosecution was contested by the applicant, that the sentence passed was manifestly excessive. It is not necessary to repeat what this court has, upon many occasions, said about the gravity of causing death by dangerous driving, most especially where drink has been taken.

This, alas, is one of those cases where, but for drink, there would have been no accident, and no tragedy. The applicant was rightly punished by the sentence passed by the judge for the offence he committed. This application also will be refused.

Application dismissed.

Solicitors for the applicant: *Brown Turner Compton Carr & Co., Southport.*

Reported by John Spencer Esq., Barrister.