Bills Committee on
Road Traffic (Amendment) Bill 2000

Driving Behaviour That May Be Regarded As Dangerous Driving

Introduction

At the meeting of the Bills Committee held on 3 April 2000, Members noted the UK experience in implementing the dangerous driving provision and agreed that it would not be feasible to include an exhaustive list of driving behaviours which would be regarded as dangerous driving in the Road Traffic (Amendment) Bill 2000. In this regard, Members requested the Administration to provide a few more UK cases illustrating the application of the test of dangerous driving and to set out some examples of such driving behaviours for reference purposes. Separately, a Member also requested the Administration to provide information on the number of appeals made by the prosecution against the sentences on careless driving in Hong Kong.

UK's Application of the Test of Dangerous Driving

2. Apart from the three UK cases discussed at the Bills Committee on 3 April 2000, the following cases can further illustrate the application of the test of dangerous driving in the UK -

(a) R v Day [1995] RTR 183: A driver drove at excessive speed on a road with acute bends. There were road markings to indicate the need for care and a warning sign informing road users that bends were imminent. The driver lost control and mounted a pavement killing a schoolgirl.

(b) R v Vano [1996] RTR 15: A driver failed to pay attention to pedestrians crossing ahead when other traffic had stopped to let two girls come onto the crossing. The driver moved out into the off side lane and continued driving without slowing down and struck one of the girls, who subsequently died.

(c) R v Vickers [1996] RTR 9: A driver, having spent over six hours drinking lager in public houses, was seen driving his car erratically, without lights, crossing the central white line and driving for some distance on the wrong side of the road. He then swerved to avoid bollards in the middle of the road and mounted a pavement, knocking down a pedestrian who subsequently died.

(d) R v Hastings [1996] RTR 331: A driver, while being chased by the police for several miles through a densely populated area, drove at a speed of up to 90 miles per hour (mph) on a road with a speed limit of 30 mph. He drove on the wrong side of the road at times, and went through red traffic lights and, having collided with another vehicle, came to rest on a pavement. No one was injured in this case.

Details of the above cases are at Annex A.

Dangerous Driving Behaviours

3. To enable the public to better understand what kind of driving behaviour may be regarded as dangerous driving under the Bill, the following illustrations may be useful for reference purposes -

(a) excessive speeding on roads where there are traffic lights, sharp bends, or emerging traffic;

(b) substantially crossing over double white lines at sharp bends or driving on the wrong side of the road continuously for some distance;

(c) overtaking by crossing over double white lines at sharp bends;

(d) driving at excessive speed through red lights at busy intersections;

(e) driving at speed and colliding with pedestrians at controlled crossings where other vehicles have clearly stopped ahead as a warning indicator; and

(f) attempting to escape obvious police apprehension thereby causing a serious risk or actual injury to others.

4. The above only serves as examples of possible dangerous driving behaviours, and all relevant circumstances, such as the time of day, weather conditions, amount of vehicular and pedestrian traffic, etc., will have to be taken into account for each individual case.

Sentences on Careless Driving

5. There was no appeal or review by the prosecution against the sentences on careless driving in the past five years. As the vast majority of cases of "careless driving" (more than 90%) involved minor incidents, we considered that the sentences imposed were adequate. However, there were a small number of cases where the offenders were prosecuted for reckless driving causing death or reckless driving, but were only convicted of careless driving as an alternative verdict. In respect of these cases, the court would impose sentences on the basis that the offenders were prosecuted for careless driving and would not take into account the unforeseen and unexpected consequences of carelessness. Under such circumstances, it was considered that the additional resources required for making an appeal or review on the sentences would not be justified.

Government Secretariat
Transport Bureau
25 April 2000

16 JUNE 1994 COURT OF APPEAL

REGINA v DAY
[Attorney General's Reference No 1 of 1994]

LORD TAYLOR OF GOSFORTH CJ, WATERHOUSE and BELL JJ

Dangerous driving – Causing death by – Sentence – Offender driving at excessive speed on road with acute bends losing control and killing schoolgirl – Aggravating feature of road warning signs ignored and offender's knowledge that road hazardous – Order of 240 hours community service – Disqualification for five years – Driving test to be undergone before licence regained – Whether unduly lenient – Road Traffic Act 1988 s 1 – Road Traffic Offenders Act 1988 ss 33, 98, Sch 2 Pt I cols 1, 2, 3, 4 – Criminal Justice Act 1988 ss 35(1), 36(1) – Road Traffic Act 1991 s 1

Section 35 of the Criminal Justice Act 1988 provides:
'(1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below . . . (3) This Part of this Act applies to any case in which sentence is passed on a person – (a) for an offence triable only on indictment . . .'
Section 36 provides:
'(1) If it appears to the Attorney General – (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and (b) that the case is one to which this Part of this Act applies, he may, with leave of the Court of Appeal, refer the case to them to review the sentencing of that person; and on such a reference the Court of Appeal may – (i) quash any sentence passed on him in the proceeding; and (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him . . .'

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 . . . is guilty of an offence.'

Section 33(1) of the Road Traffic Offenders Act 1988 provides:
'Where a person is convicted of an offence against a provision ... specified in column 1 of Part I of Schedule 2 to this Act ... the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence ..'
Section 98(3) provides:
'In the Schedules to this Act ... "RTA" is used as an abbreviation for the Road Traffic Act 1988 ...'
Part I of Schedule 2 *[as amended by Schedule 2 to the Road Traffic Act 1991]* provides:
'*Column* (1) Provision creating offence . RTA section 1 ... *Column* (2) General nature of offence ... Causing death by dangerous driving . *Column* (3) Mode of prosecution . On indictment ... *Column* (4) Punishment ... 5 years ...'

The offender, when driving to work in his motor car accompanied by two passengers, entered a road containing acute bends which had road markings to indicate the need for care and a warning sign informing road users that bends were imminent. It was wet. He drove in excess of the 30 miles per hour speed limit and 'in an aggressive manner.' After about 300 yards he lost control of the car which mounted the pavement and struck a schoolgirl, who was thrown in the air and over a stone parapet. The girl died from her injuries, and the offender was subsequently convicted of causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988, as substituted. The judge discounted criticisms made of the offender's driving before he reached the road in question and imposed a community service order for 240 hours, disqualified the offender for five years, required that he should retake a driving test before having his licence restored and ordered him to pay prosecution costs of £998.
On an application by the Attorney General under section 36 of the Criminal Justice Act 1988 to refer the sentence to the court as being unduly lenient:
Held, refusing the application, that, although the judge might have been over-favourable to the offender in disregarding evidence of fast and aggressive driving by the offender before he entered the road in question, the court ought to accept the factual basis as the trial judge, having heard the evidence and seen the witnesses, found it (p 187A–B); that, although the presence of the road signs was at least a visual reminder, however familiar the offender was with the road, of the need to take care, his ignoring them did not add much by way of aggravation to the excessive speed which formed the basis of the case (p 187D–E); that, similarly, the offender's knowledge that the stretch of road in question was hazardous and required great care was comprised in the driving at excessive speed (p 187E–F); that the consequences of the offence were to be taken into account in sentencing in the context of how culpable the offending was (p 189A); and that the sentence imposed, though lenient, was not unduly so, bearing in mind, inter alia, that none of the aggravating features described in *Reg. v Boswell [1984] RTR 315, 320* were present and that the relevant maximum sentence was five years imprisonment (pp 187L, 188C–D, G).
Reg. v Boswell [1984] RTR 315, CA considered.

No other case was cited in argument.

Reference by the Attorney General under section 36 of the Criminal Justice Act 1988

The application to refer, dated 5 January 1994, was in the following terms.
'(1) The offender's name is Ian Kenneth Campbell Day and he is 23 years of age having been born on 1 June 1970.

'(2) On 11 November 1993 the offender was convicted of one count of causing death by dangerous driving. The case was adjourned for reports.
'(3) On 9 December 1993 the offender was made the subject of a community service order for 240 hours, disqualified for five years, ordered to retake a driving test before having his licence restored and ordered to pay prosecution costs of £998.
'(4) The judge was Judge Fanner sitting in the Crown Court at Bristol.
'(5) The facts were as follows. (a) The victim was a 14-year-old schoolgirl, Heather Suzanne Mills. On Wednesday, 25 November 1992 at about 8.15 a.m. she was walking to school along Entry Hill, Bath, accompanied by a schoolfriend Joanna Williams also aged 14 years. (b) The offender had left his home address at about 8.10 a.m. in order to drive to work. He used his own motor vehicle, a Ford Orion, and had two passengers. (c) The offender's route to work took him along Entry Hill. It was a route which he knew well and which he had driven regularly during the preceding 12 months. Entry Hill is a hazard marked by road signs. (d) In the course of his journey a number of pedestrians and other motorists noticed that the offender was driving in excess of the speed limit and in an aggressive manner. (e) One of his passengers feared for her safety during the journey and judged that the offender did not have proper control over his car. (f) The offender proceeded into Entry Hill, which is subject to a 30 miles per hour speed limit, to a point where the road bends firstly to the left and then to the right in the shape of an 'S'. (g) The speed of the offender's vehicle was such that the offender lost control, and the vehicle mounted the near side pavement. The vehicle brushed past Joanna Williams and then struck the victim tossing her into the air. She was thrown over the side of a stone parapet and fell some 27 feet down into a garden. She suffered multiple injuries and died later the same day. (h) At the scene the offender said: "I came round the corner, the car skidded and that was it, I hit the wall. I don't know if my tyre hit the kerb. It might have blown up and that's why it might have happened. I drive this road every day. As I came around the corner the girls were in front of me but afterwards I looked behind but could see only one." When interviewed under caution at a police station later he made no comment. (i) Subsequent examination of the offender's vehicle revealed no defects which could have caused or contributed to the accident.
'(6) The following aggravating features would appear to be present. (a) This was a persistent course of fast and aggressive driving. (b) The offender ignored road signs indicating the dangers of the bend in question. (c) To the offender's knowledge this was a hazardous stretch of road which required great care.
'(7) The following mitigating features would appear to be present. The offender is aged 23 years of age and had no previous convictions.
'(8) The following authorities are relied on: *Reg. v Boswell [1984] RTR 315, CA.*
'(9) It is submitted that the sentence imposed on the offender in this case is unduly lenient for the following reasons. (a) The sentence fails adequately to reflect the gravity of the offence. (b) The sentence fails to take sufficient account of the need to deter others from committing offences of this nature. (c) The sentence fails to take sufficient account of the need to mark public concern for cases of this sort.
'(10) It appears to me that the sentence was unduly lenient and that this case is one to which Part IV of the Criminal Justice Act 1988 applies. Accordingly I apply for leave to make a reference to the Court of Appeal.'

William Boyce for the Attorney General.
Richard L Smith for the offender.

Lord Taylor of Gosforth CJ gave the following judgment of the court: This is an application, under section 36 of the Criminal Justice Act 1988, on behalf of Her Majesty's Attorney General for leave to refer to this court

for review a sentence which the Attorney General considers was unduly lenient. We have granted leave.

The offender's name is Ian Kenneth Campbell Day. He is now 24 years of age. On 11 November 1993, he was convicted of causing death by dangerous driving. Sentence was adjourned for reports. On 9 December 1993, the court made an order that the offender be made the subject of a community service order for 240 hours and that he be disqualified from driving for five years. He was ordered to retake a driving test before a licence could be restored to him. He was also ordered to pay prosecution costs of £998.

The case arose from driving by the offender on Wednesday, 25 November 1992. At about 8.15 a.m. the victim, a 14-year-old schoolgirl, Heather Suzanne Mills, was walking to school along Entry Hill, Bath. She was accompanied by a school friend, Joanna Williams, also aged 14.

The offender left his home address at about 8.10 a.m. to drive to work. He was in his Ford Orion motor car. He was accompanied by two passengers. The route to his work took him along a number of roads a distance of over four miles and then into Entry Hill. He knew that route well. He had driven it regularly over the preceding 12 months. Entry Hill is a road which contains acute bends. There were road markings to indicate the need for care. The word 'Slow' was painted in the road 13 yards from the first bend. There were road signs consisting of red triangular warning signs informing road users that the bends were imminent. Those signs were about 100 yards away from the first bend. The offender knew the road well and knew that there were acute bends to be negotiated. The speed limit was 30 miles an hour. Clearly, to negotiate the bends a lower speed would be appropriate. There was evidence that a number of pedestrians and other motorists saw the offender driving in excess of the speed limit 'in an aggressive manner.'

One of his passengers, Cindy Key, gave evidence that he had driven recklessly and fast. She was scared for her safety and for that of others; the journey was frightening, and the vehicle was not under control. However, when she was cross-examined she was unable to give chapter and verse for those criticisms.

The other witness who was a passenger in the car did not confirm what Cindy Key said. Accordingly, when the judge came to pass sentence, he discounted criticisms of the offender's driving prior to Entry Hill.

The offender reached Entry Hill, and after about 300 yards he lost control of his vehicle. It mounted the near side pavement. It brushed past Joanna Williams, and then struck the victim, tossing her into the air. It is not known what injuries she sustained at that stage, but the effect of the impact was to throw her over a stone parapet and cause her to fall 27 feet into a garden. She suffered multiple injuries, and died later the same day.

At the scene, the offender said:

'I came round the corner, the car skidded and that was it. I hit the wall. I don't know if my tyre hit the kerb. It might have blown up and that's why it might have happened. I drive this road every day. As I came around the corner, the girls were in front of me, but afterwards I looked behind but could see only one.'

Apart from the difficulty and the need for care occasioned by the presence of the bends, the road on this particular day was wet.

When he was interviewed under caution at the police station, the offender made no comment. It is submitted on behalf of the Attorney General that there were, in addition to the driving at excessive speed, aggravating features. First, it was submitted that there was here a persistent course of fast and aggressive driving. The evidence before the trial judge and jury as

to this was not entirely consistent or specific. The judge may well have been over-favourable to the offender in taking the view that he should not have regard to the evidence – albeit general evidence – of fast and aggressive driving prior to Entry Hill. However, he heard the evidence, saw the witnesses, and sentenced the offender on a factual basis, which this court considers it would be wrong for us to vary. Accordingly, we consider that we ought to accept the factual basis as the trial judge found it.

The second matter alleged to be an aggravating feature is that the offender ignored the road signs indicating the dangers of the bends in question. At the time when the reference was made, it may have been thought that chevrons at intervals along the road were present at the time of the accident. It now emerges that those signs were only introduced after the accident, possibly as a result of it. Nevertheless, there were the road signs that have already been mentioned. The question is whether ignoring those was an aggravating feature in the case.

Mr Smith, who has addressed us persuasively on behalf of the offender, submits that the road signs were no more than indicative of that which the offender already knew, namely, that this part of the road needed care, and his driving too fast is something which has already been considered and is the basis of the conviction. The failure to accord due attention to the road signs does not, he submits, take the matter any further. In our view, the presence of the road signs was at least a visual reminder to the driver, however familiar he was with the road, of the need to take care. However, we do not regard his ignoring those as adding much by way of aggravation to the excessive speed which forms the basis of the case.

Thirdly, it is said by way of aggravation that to the offender's knowledge this was a hazardous stretch of road which required great care. Again, in our view, that is a matter which is comprised in the offence of driving at excessive speed.

The leading authority on the level of sentencing for this type of offence is the well known case of *Reg. v Boswell [1984] RTR 315*. There, Lord Lane CJ indicated the matters which might be regarded as aggravating features and matters which might be regarded as mitigating features. He also indicated the proper approach to sentencing. He did not close the door in those guidelines to the possibility that in cases which lacked aggravating features it might be possible to avoid a custodial sentence. He particularly indicated the mitigating features which might persuade a court to take that course. Having listed the aggravating and mitigating features, he said, at p 321C:

'The situation where there are no aggravating features present is that, so far as sentencing is concerned, a non-custodial penalty may well be appropriate, but where aggravating features are, or an aggravating feature is, present then a custodial sentence is generally necessary.'

That guideline case was decided at a time when the maximum sentence for causing death by reckless driving (as it was then) was five years. Subsequently, in 1993, after the offence had been changed by statute [section 1 of the Road Traffic Act 1991] in 1992 to causing death by dangerous driving, Parliament passed a further Act in which the maximum sentence was increased from five to ten years [section 67 of the Criminal Justice Act 1993] to take account of the serious view which Parliament, on behalf of the public, takes of deaths on the road due to bad driving. However, it has to be remembered that the present case was decided on the basis of the lower maximum sentence of five years. All sentences at that time must take their colour from what the maximum was. Different considerations may well apply now that the maximum sentence has been doubled.

The offender was at the time 23 years old. He was of previous good character: he had no previous convictions of any kind; there were no criticisms of his driving on previous occasions. He contested the case, and therefore is not entitled to any mitigation or discount in respect of a plea of guilty which might otherwise have been available to him. However, he did concede that he was at fault and to blame for the death. The issue at the trial was as to whether his driving was in the class of careless driving or more seriously was dangerous driving. The jury found the latter.

In the offender's favour, having been made the subject of a community service order of 240 hours, he has performed more than half of the required service. He has performed it properly and has maintained his good character throughout that period. A post-sentence reports indicates that, although slow in coming forward with expressions of remorse, he is now genuinely remorseful.

In these circumstances, we have to ask ourselves whether the sentence imposed by the judge was lenient? We consider that it was. We would have to go further through, before we could interfere, and hold that it was unduly lenient. We bear in mind that in the present case there were none of the features present which were described by Lord Lane CJ in *Reg. v Boswell [1984] RTR 315* as aggravating features. The driving which the judge found he had to consider was over 300 yards from the beginning of Entry Hill to the point of the accident, not a persistent and deliberate course of very bad driving. The ignoring of the traffic signs went hand in hand with the driving at too fast a speed, which was the basis of the conviction.

We consider that in the present case it would be inappropriate for us to change the sentence which has been passed. Had we been sitting at first instance to deal with this matter, it may be that we would have taken a different view. Particularly might we have done so in the different climate created by the more recent statute which has increased the maximum sentence. However, bearing in mind that the trial judge heard the case, saw the persons who had been present at the accident and formed a view of the case and of the offender, we consider that it would be wrong to describe this sentence as unduly lenient.

We bear in mind that if we did consider it to be so, and took the view that a short sentence ought to be passed, it would have to be a sentence shortened still further by the fact that the offender has already performed half of the sentence that the trial judge imposed upon him, and that due allowance would have to be made for the fact that he has come back a second time to be sentenced and there would therefore be an element of double jeopardy.

We are very conscious of the fact that this type of case causes great distress, particularly in those closely concerned with the victim. We well understand that they may feel a non-custodial sentence undervalues the loss of the life that they would very much have wished to be preserved. We fully understand that. But it must be understood by everyone, including those who are in distress, that no sentence that the court imposes can bring back that life. Even if a short sentence of imprisonment is imposed, those who are closely related to the victim will feel that it is an inadequate measure of the loss of life. The court has to approach the case very much with the offending in mind and the degree of criminality involved. It is true that the court must in this class of case bear in mind the death, because that is at the heart of the offence. The judge said:

'It must be understood that when the courts have to consider this offence, they have to sentence you on the manner of your driving at that time, the consequences being in mind but not a matter to be sentenced on.'

We cannot agree with the judge that the consequences are not a matter to be sentenced on. They do have to be taken into account, but in the context of how culpable the offending was. In the present case, we take the view that the offending did not reach the point where a non-custodial sentence could be said to be unduly lenient. Accordingly, this application is refused.

Application refused

Solicitors for the Attorney General: Crown Prosecution Service, Headquarters
Solicitors for the offender: MacFarlane Gay, Bath
Reported by Miss Clare Noon, Barrister

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4 MAY 1995 **COURT OF APPEAL**

REGINA v HASTINGS

LORD TAYLOR OF GOSFORTH CJ, TUCKER and FORBES JJ

Dangerous driving – Sentence - Driver apprehended and breathalysed after collision following chase at high speeds over several miles in densely populated area – Guilty pleas to dangerous driving and driving with excess alcohol - Recorder describing offence as of 'worst kind' imposing maximum sentence of two years imprisonment – Whether failure to recognise absence of aggravating features such as injury to road users – Whether reduction for guilty pleas appropriate – Road Traffic Act 1988 ss 2, 5(1)(a) – Road Traffic Offenders Act 1988 ss 33(1), 34, 97(1), 98(3), Sch 2 Pt 1, cols 1, 2, 4, 5 - Road Traffic Act 1991 ss 1, 83, Sch 4

Section 2 of the Road Traffic Act 1988 *[as substituted by section 1 of the Road Traffic Act 1991]* provides:
'A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.'
Section 5(1) provides:
'If a person – (a) drives . . . a motor vehicle on a road . . . after consuming so much alcohol that the proportion of it in his breath . . . exceeds the prescribed limit he is guilty of an offence.'

Section 33(1) of the Road Traffic Offenders Act 1988 provides:
'Where a person is convicted of an offence against a provision . . . specified in column 1 of Part I of Schedule 2 to this Act . . . the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence . . .'
Section 34(1) provides:
'Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than 12 months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.'
Section 9(1) provides:
'For the purposes of this Act, an offence involves obligatory disqualification if it is an offence . . . specified in column 1 of Part I of Schedule 2 to this Act . . . and either - (a) the word "obligatory" (without qualification) appears in column 5 . . . against the offence, or (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.'
Section 98(3) provides:
'In the Schedules to this Act . . . "RTA" is used as an abbreviation for the Road Traffic Act 1988 . . .'
Part I of Schedule 2 *[as amended by section 83 of and Schedule 8 to the Road Traffic Act 1991]* provides:
'*Column* (1) Provision creating offence . . . RTA section 2 . . . *Column* (2) General nature of offence . . . Dangerous driving . . . *Column* (4) Punishment . . . (b) 2 years or a fine or both . . . *Column* (5) Disqualification . . . Obligatory . . . *Column* (1) Provison creating offence . . . RTA section 5(1)(a) . . . *Column* (2) General nature of offence . . . Driving . . . with excess alcohol in breath . . . *Column* (4) Punishment . . . 6 months or level 5 on the standard scale or both . . . *Column* (5) Disqualification . . . Obligatory . . .'

The appellant, while being chased by the police for several miles through a densely populated area, drove at speeds of up to 90 mph in a 30 mph limit, sometimes on the wrong side of the road, through red traffic lights and, having collided with another vehicle, came to rest on the pavement. He was given a breath test which proved positive. The appellant pleaded guilty to dangerous driving and to driving with excess alcohol in his breath. He had never held a full driving licence but had a long history of driving offences. The appellant was sentenced to two years imprisonment for the offence of dangerous driving, six months imprisonment concurrent for the offence of driving with excess alcohol and disqualified for three years.
On appeal against the sentence of two years imprisonment on the ground that no credit had been given for the guilty pleas and that there had been a failure to recognise the absence of aggravating features such as injury to road users:
Held, dismissing the appeal, that the appellant, having been caught red handed, had had no realistic alternative to pleading guilty (p 334L); that in such circumstances it was not necessarily to be expected that the court would reduce the sentence which was otherwise appropriate (p 334L); that it was impossible to detect any mitigating factor from the facts of the offence or from the appellant's character (pp 333L, 334A); and that, accordingly, the appropriate sentence was the maximum sentence of two years imprisonment and no reduction was appropriate even having regard to the appellant's plea of guilty (p 335A).
Reg. v Costen (1989) 11 Cr App R(S) 182, CA applied.

Additional cases referred to in the judgment:
Reg. v Carroll [1995] Crim LR 92, CA
Reg. v Morris (1988) 10 Cr App R(S) 216, CA
Reg. v Sharkey [1994] Crim LR 868, CA

Appeal against sentence

The appellant, Lance Barry Hastings, on 10 November 1994 in the Crown Court at Bristol pleaded guilty to a single count of dangerous driving and to an offence of driving with excess alcohol in his breath. On 14 December 1994 Mr Recorder Lane QC sentenced him to two years imprisonment and disqualified him from driving for three years for the dangerous driving offence and sentenced him to six months imprisonment concurrent for the excess alcohol offence. He appealed against the sentence of two years imprisonment with leave of the single judge. McKinnon J, on the grounds that (1) the judge failed to give credit for the appellant's guilty pleas; and (2) the judge stated that the case was the worst kind of dangerous driving and in so doing failed to give recognition to the absence of aggravating features such as injury to road users, which, had they been present, would have made the offence more serious and therefore deserving of a longer custodial penalty.
The facts are stated in the judgment.

Patrick Sullivan (assigned by the Registrar of Criminal Appeals) for the appellant.

Lord Taylor of Gosforth CJ Tucker J will give the judgment of the court.

Tucker J This appellant is aged 22. He appeals by leave of the single judge against a sentence of two years imprisonment imposed in the Crown Court at Bristol on 14 December 1994.
The appellant had pleaded guilty to two offences arising out of his driving of a Ford Sierra car through the streets of Bristol in the early hours of Sunday 5 June 1994. The first offence was dangerous driving and the second was driving with excess alcohol. The sentence of two years imprisonment was imposed for the offence of dangerous driving and a concurrent sentence of six months imprisonment was imposed for driving with excess alcohol. The appellant was also disqualified from driving for a period of three years. No complaint is made about the length of the disqualification or about the sentence of six months imprisonment. It is not suggested, nor could it be, that sentences of imprisonment were inappropriate.
However, as to the two years imprisonment for the offence of dangerous driving, the grounds of appeal are that this case should not have attracted the maximum sentence for two reasons: first, because no credit was given for the guilty pleas; and, second, because the recorder stated that the case was the worst kind of dangerous driving and in so doing failed to recognise the absence of aggravating features such as injury to road users.
The recorder rightly described what happened as being a chase which took place in a built up, densely populated area of Bristol, over a distance of several miles. The appellant was chased by the police, drove at speeds of 70, 80 and even 90 mph in a 30 mph limit area; he did so at times with his car lights switched off; he caused another vehicle to take action to avoid a collision; he drove on the wrong side of the road; he drove through traffic lights when they were showing red; he collided with another moving vehicle and he came to rest on the pavement. It is quite fortuitous that no one was injured. When he was stopped the appellant said that he had taken drugs earlier on. The breath test proved positive. He admitted that he was the driver.
In our view it is impossible to detect, from those facts, any mitigating factor. That is a description of the offence which the probation officer, let it be noted, described as a

'very serious driving incident.'

What about the appellant? He has never held a full driving licence. But driving cars often not belonging to him seems to be his obsession. He has many convictions and he has received several custodial sentences as a result of it. Again we quote the probation officer:

'He has a long history of offending.'

The longest sentence before this was one of 30 months detention, imposed on 4 May 1993. The appellant was released from that sentence in November 1993. Between that time and the date of the present offences he committed further driving offences when he was, according to the probation officer, affected by alcohol. It would appear that he is incorrigible. There is no mitigation in his character. The only arguable piece of mitigation was the fact, therefore, that he had pleaded guilty.

It is a well-established principle that courts will recognise a plea of guilty, whether on grounds of public policy or as an indication of remorse in appropriate cases, by reducing the sentence which would otherwise have been imposed in order to reflect the plea. Mr Sullivan, who has advanced his client's case resolutely and carefully, relies on recent decisions of this court where maximum sentences have been reduced. In particular he relies on *Reg. v Sharkey [1994] Crim LR 866*, and on *Reg. v Carroll [1995] Crim LR 92*. We in no way disagree with what was said in those cases, in particular in *Carroll*, where it is said, at p 93:

'. . . it is incumbent upon sentencers to abide loyally by the maximum sentence provided by Parliament in the statute which governs the offence. If the sentencer intended to indicate that his view was that the maximum sentence was so low that he intended to impose that sentence without regard to the circumstances of the case and any discounts to which the appellant could reasonably expect to be entitled, that approach would be wrong in principle.'

That is what had occurred in *Reg. v Carroll*, but it is not what occurred in the present case. The recorder made no such observation. He said:

'I have regard to the facts of this instant offence as being the worst example of dangerous driving that any court can deal with . . . There is no mitigation for the offence, and there is no mitigation for the offender. I do not – I repeat, I do not – give you any credit for your plea of guilty for two reasons. First, because this is the worst kind of dangerous driving the courts can encounter and, secondly, because you were effectively caught red-handed and you had no option but to plead guilty. I shall therefore pass the maximum sentence which I am told I can.'

As we have said, by virtue of the Road Traffic Offenders Act 1988 the maximum sentence was one of two years imprisonment.

It is not in every case where a plea of guilty is entered that a reduction is given. In *Reg. v Costen (1989) 11 Cr App R(S) 182* Lord Lane CJ dealt with such a case and gave certain guidelines. He instanced two examples where, despite a plea of guilty, no reduction could be necessarily expected. The first is where there had been a 'tactical plea.' The second he described in these words, at p 185:

'Finally, the third situation where the man has been caught red handed and a plea of guilty is practically speaking inevitable. In those circumstances any discount may be reduced or indeed lost.'

He referred to an example: *Reg. v Morris (1988) 10 Cr App R(S) 218.*

In the opinion of this court the present case is an example of that situation. The appellant admitted, as he had to, at the scene of the final collision that he was the driver of the vehicle. He had no realistic prospect of contesting the matter; he had no realistic alternative but to plead guilty; he was caught red-handed. In those circumstances it is not necessarily to be expected that the court will order a reduction of the sentence which is otherwise appropriate. The sentence which was otherwise appropriate in the present case was the maximum sentence of two years imprisonment. No reduction is appropriate, even having regard to the plea of guilty. Therefore, despite the best efforts of Mr Sullivan, for which we commend him, we are of the view that the recorder was entirely justified in imposing, as he did, the maximum sentence for this deplorable piece of driving. The sentence, therefore, stands and the appeal will be dismissed.

Appeal dismissed

Reported by Miss Clare Noon, Barrister

12 DECEMBER 1994 COURT OF APPEAL

REGINA v VICKERS
[Attorney General's Reference (No 42 of 1994)]

LORD TAYLOR OF GOSFORTH CJ, SMITH and CRESSWELL JJ

Dangerous driving - Causing death by - Sentence - Offender after evening's drinking driving erratically without lights - Car mounting pavement and killing pedestrian - Offender fleeing from scene and denying driving - Breath alcohol three times limit - Whether three years imprisonment unduly lenient - Whether double jeopardy on reference by Attorney General to be considered - Criminal Justice Act 1988 ss 35, 36(1) - Road Traffic Act 1988 s 1 - Road Traffic Offenders Act 1988 ss 33(1), 98(3) Sch 2 Pt I - Road Traffic Act 1991 s 1, Sch 2 - Criminal Justice Act 1993 s 67(1)

Section 35 of the Criminal Justice Act 1988 provides:
'(1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below . . . (3) This Part of this Act applies to any case in which sentence is passed on a person – (a) for an offence triable only on indictment . . .'
Section 36(1) provides:
'If it appears to the Attorney General – (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and (b) that the case is one to which this Part of this Act applies, he may, with leave of the Court of Appeal, refer the case to them to review the sentencing of that person; and on such a reference the Court of Appeal may – (i) quash any sentence passed on him in the proceeding; and (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him . . .'

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 33(1) of the Road Traffic Offenders Act 1988 provides:
'Where a person is convicted of an offence against a provision . . . specified in column 1 of Part I of Schedule 2 to this Act . . . the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence . . .'
Section 98(3) provides:
'In the Schedules to this Act . . . "RTA" is used as an abbreviation for the Road Traffic Act 1988 . . .'
Part I of Schedule 2 *[as amended by Schedule 2 to the Road Traffic Act 1991 and section 67(1) of the Criminal Justice Act 1993]* provides:
'*Column* (1) Provision creating offence . . . RTA section 1 . . . *Column* (2) General nature of offence . . . Causing death by dangerous driving . . . *Column* (4) Punishment . . . 10 years . . . *Column* (5) Disqualification . . . Obligatory . . .'

The offender, having spent around six-and-a-half hours one evening drinking lager in public houses, was seen driving his car, without lights, erratically, at one point on the wrong side of the road. He swerved to avoid bollards in the middle of the

road and mounted the near side pavement. The offender's car struck the victim, who was walking along the pavement, throwing him in the air. The victim sustained serious head injuries and died. One of the victim's friends approached the offender's vehicle, but the offender drove off at speed. His car was later found abandoned, and when visited by the police shortly afterwards he first claimed that he had sold the car, but then said that he had left it in town and walked home. A breath specimen provided by the offender produced a reading of 115 microgrammes of alcohol in 100 millilitres of breath. The offender subsequently pleaded guilty to causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988 and was sentenced to three years imprisonment and disqualified for seven years.

On an application by the Attorney General for leave to refer the sentence as being unduly lenient:

Held, granting leave and allowing the reference, that someone who went on a pub crawl and then got into a motor car, drove it without even putting on the lights, drove all over the road in an urban area and mounted the pavement, moving down an innocent member of the public committed a very, very serious offence (p 14H); that the sentence passed by the trial judge was unduly lenient, having regard to the penalties which Parliament had recently increased and guidance given by the Court of Appeal (p 14G); and that the case called for a sentence twice that imposed, but, bearing in mind the element of double jeopardy, a sentence of five years imprisonment would be substituted (p 14G–H).

Reg. v Shephard; Reg. v Wernet (Attorney General's Reference Nos 14 and 24 of 1993) [1994] RTR 49, CA applied.

Additional case referred to in the judgment:
Reg. v Boswell [1984] RTR 315, CA

No other case was cited in argument.

The following cases, although not cited, were listed in the amended reference:
Reg. v Deery (1994) 15 Cr App R (S) 818, CA
Reg. v Harrison (1994) 15 Cr App R (S) 546, CA
Reg. v Rayner [1995] RTR 119, CA
Reg. v Spence (1994) 15 Cr App R (S) 653, CA

Reference by the Attorney General under section 36 of the Criminal Justice Act 1988
Application for leave to refer sentence

The Attorney General, by amended reference dated 8 December 1994, applied in the following terms to refer a sentence.

'1 The offender's name is Kevin Norman Vickers. He is 27 years old having been born on 28 December 1966.

'2 The offender pleaded guilty on 1 September 1994 to causing the death of Robert Taylor on 23 December 1993 by dangerous driving, contrary to section 1 of the Road Traffic Act 1988.

'3 He was sentenced on 7 October 1994 to three years imprisonment and disqualified from driving for a period of seven years.

'4 The judge was Judge Bush sitting in the Crown Court at Leeds.

'5 The facts were as follows. (a) On Thursday, 23 December 1993, the offender went drinking in Keighley town centre after work. He was in the Bridge public house from just after 5.00 pm celebrating Christmas with friends until about 9.30 pm, drinking lager. He was later seen by an acquaintance in the Commercial public house at 10.30 pm. At one stage whilst there, he refused a drink that a

friend offered to buy him saying that he intended to drive. (b) At about 11.45 pm the offender was driving his Ford Escort along South Street, Keighley towards his home. The road is subject to a 30 mph limit and is lit by street lights. Behind him was another motorist who noticed that the offender's car was displaying no lights and was driving erratically. The following motorist maintained intermittent observation of the offender's vehicle over a distance of about three-quarters of a mile. (c) The offender was seen to cross the central white line and drive for some distance on the wrong side of the road. As he approached a slight left-hand bend he swerved to the left in order to avoid some bollards in the centre of the road. He struck the near side kerb and mounted the pavement, travelling along it a short distance before rejoining the road. Pedestrian witness spoke of the speed of the offender's car being in excess of 30 mph. (d) The victim, a 46-year-old man, Robert Taylor, was walking along the pavement with his wife and two of their friends. He was at the rear and nearest the road although well on to the pavement. The offender's vehicle struck the victim and threw him into the air and forwards a considerable distance. He sustained serious head injuries. The post-mortem examination found the cause of death to be a fractured skull and cerebral contusions. (e) One of the victim's friends approached the offender's vehicle and spoke to him through the broken passenger window. The offender looked up then drove off at speed. (f) The motorist who had followed the offender before the collision pursued him. He was still displaying no lights and accelerated hard away, again crossing the central white line. The pursuer lost sight of the offender's car after a series of bends but had noted the registration number of the car. (g) He returned to the scene of the collision and collected his wife who had been rendering first aid and then retraced the route of the offender's vehicle. He discovered the offender's car abandoned close to where he had lost sight of it and reported it to the police. (h) The offender was traced as the registered keeper of the vehicle and the police visited his home at 12.15 a.m. He first claimed that he had sold the car but then said he had been drinking all evening in the town and had walked home having left his car in the market square. (i) A breath specimen provided at 12.48 a.m. produced a reading of 115 microgrammes of alcohol in 100 millilitres of breath. (j) He was interviewed the following day in the presence of his solicitor and maintained that he did not drive his car home the previous night. He did not remember saying to the police that he had sold his car. He claimed that he had parked the car in the town centre at about 6.30 pm and had gone drinking with friends. He finished drinking at about 11.00 pm and then walked home. He thought he had drunk about 12 pints of bitter. (k) In the course of mitigation, having pleaded guilty, the offender said that he could not, in truth, remember anything that evening after having left the public house. (l) The offender who had passed his driving test some five months before the accident had a clean licence.

'6 The following aggravating features appear to be present: (a) the offender had over three times the legal limit of alcohol in his body; (b) the offender failed to remain at the scene and drove off at speed in an attempt to avoid detection. He abandoned the car and when arrested denied being the driver.

'7 The following mitigating features appear to be present: (a) the plea of guilty; (b) reports before the court noted the offender's remorse and referred to claustrophobic symptoms suffered by the offender which would make his being locked in a cell particularly unpleasant.

'8 The following authorities are relied on:
Reg. v Boswell [1984] RTR 315, CA
Reg. v Harrison (1994) 15 Cr App R (S) 564, CA
Reg. v Shephard; Reg v Wernet (Attorney General's References Nos 14 and 24 of 1993) [1994] RTR 49, CA
Reg. v Spence (1994) 15 Cr App R (S) 653, CA
Reg. v Deery [1994] Crim LR 468, CA

Reg v Rayner; Reg. v Wing (Attorney General's References Nos 24 and 32 of 1994) [1995] RTR 119, CA

'9 It is submitted that the sentence of three years imprisonment was unduly lenient in that it failed to reflect adequately the gravity of the offence, particularly in the light of the increase in the maximum sentence to 10 years' imprisonment; the need to deter others and the need to mark public concern for offences of this kind.

'10 It appears to me that the sentence was unduly lenient and that this case is one to which Part IV of the Criminal Justice Act 1988 applies. Accordingly, I apply for leave to make a reference to the Court of Appeal.'

Mark Ellison for the Attorney General.
John Swanson for the offender.

Lord Taylor of Gosforth CJ gave the following judgment of the court. This is an application by Her Majesty's Attorney General, pursuant to section 36 of the Criminal Justice Act 1988, whereby he seeks leave to have this court review a sentence he regards as unduly lenient. We grant leave.

The offender is Kevin Norman Vickers, aged 27 years. On 1 September 1994 he pleaded guilty to causing the death of Robert Taylor on 23 December 1993 by dangerous driving, contrary to section 1 of the Road Traffic Act 1988 (as amended). On 7 October 1994 he was sentenced to a period of three years imprisonment and disqualified from driving for a period of seven years. On 3 November the case was relisted and the trial judge added to his sentence an order that the disqualification should continue until the offender passed a driving test.

The case arose from the offender's drinking in Keighley town centre on Thursday, 23 December 1993. He was apparently celebrating the impending Christmas with his friends. Having regard to the time of year at which this case comes before this court, it may perhaps be regarded as a case which has a salutary lesson for drivers.

The offender was in the Bridge public house from just after 5.00 pm until about 9.30 pm, drinking lager with friends. At around 10.30 pm he was seen in a different public house. At about 11.45 pm he was driving his Ford Escort along South Street in Keighley towards his home. There is a 30 mph speed limit at that part of the road which is lit by street lights. Another motorist was following him. The motorist noticed that the offender's car was displaying no lights and was being driven erratically. The motorist maintained observations on the offender's vehicle intermittently over a distance of about three-quarters of a mile. At one point the offender was seen to cross the central white line and drive some distance on the wrong side of the road. As he approached a slight left-hand bend, he swerved to the left in order to avoid some bollards in the centre of the road, which he was otherwise going to hit. That was a manoeuvre done at the last moment; it was an overcompensation and the effect was that the offender's car struck the near side kerb and mounted the pavement along which it travelled a short distance before rejoining the road. Pedestrians who saw the vehicle at that stage said that it was being driven in excess of 30 mph.

The victim, Mr Taylor, aged 46, was walking along the pavement with his wife and two of their friends. Two were in the front and the victim was in the pair at the rear and nearest to the road, although he was well away from the kerb. The offender's vehicle struck the victim and threw him into the air and forwards for a considerable distance. The victim sustained

serious head injuries and death was caused by a fractured skull and cerebral bruising.

The offender's vehicle stopped briefly. One of the victim's friends approached the passenger window. The offender looked up, but then drove away at speed. The motorist who had followed him before the collision allowed his wife to get out of the car to try and assist the victim. The motorist tried to follow the offender. The offender's vehicle still displayed no lights. It accelerated quickly away from the scene. Again it crossed the central white line. The pursuer lost sight of the offender's vehicle after a series of bends, but by that time, fortunately, he had noted the registration number of his car, which he wrote down on his hand. Having failed successfully to follow the offender's car, the pursuer returned to the scene of the collision and collected his wife. They got back into the car and retraced the route which the offender's vehicle had taken. Eventually, the vehicle was found abandoned near to the place where the pursuer had originally lost sight of it. He reported the matter to the police who were able to trace the offender because of the registration number.

The police visited the offender's home at a quarter past midnight. At first, he claimed that he had sold the car. Later, he said that he had been drinking all evening in the town and had left his car in the market square and had walked home. He was breathalysed and the breath specimen, provided at just after 12.45 a m – that is about an hour after the accident – produced a reading of 115 microgrammes of alcohol in a 100 millilitres of breath. The effect of that was that an hour after the accident the offender was more than three times over the limit, and, at the time of the accident he must have been considerably more than three times over the limit.

He was interviewed the following day in the presence of his solicitor. He still maintained an untruthful story that he did not drive his car home. He did not remember telling the police he had sold it. He claimed that he had left the car parked in the town centre at 6.30 pm, had gone drinking, had finished drinking at about 11.00 pm and had walked home. He thought he had drunk about 12 pints of bitter beer. That story was not pursued at the trial.

In mitigation it was said that the offender could not, in truth, remember anything about the evening after leaving the public house. However, it was a considerable and somewhat tortuous journey from where he abandoned his car to his home and he seems to have managed to negotiate that in full awareness of where he was going.

The offender had passed his driving test only five months before the accident. In those five months he had not appeared before any court in respect of any driving. He had a clean licence therefore.

On behalf of the Attorney General it is submitted that this was a bad case with aggravating features: the offender had substantially over three times the legal limit of alcohol in his body; he failed to remain at the scene of the accident, but drove away at speed in an attempt to avoid detection; he abandoned his car; and when the police approached him, he sought to brazen out that he had not been the driver.

In his favour it had to be taken into account that he did ultimately plead guilty. It was also said that he had showed remorse. In regard to the prison sentence which he was clearly going to have to serve, it was pointed out that he suffered from symptoms of claustrophobia which would make a sentence of imprisonment particularly unpleasant for him.

Mr Swanson, who has appeared on behalf of the offender and who has addressed us persuasively, submitted that, although this was a lenient sentence, it was not so unduly lenient that the court ought to interfere. He

conceded that the driving was bad and that the alcohol, which had been consumed, was a gravely aggravating feature. However, he submitted that taking into account the level of sentencing which was not so low as to be unduly lenient, together with the element of double jeopardy which is involved in a reference by the Attorney General, this court ought not to add to the offender's sentence.

It has been said a number of times by this court that Parliament has recently indicated that this kind of offending must be regarded as very serious. It did so by doubling the maximum penalty from one of five years to one of 10 years imprisonment. Following that enactment, this court, in the guideline case of *Reg. v Shepherd; Reg. v Wernet (Attorney General's References Nos 14 and 24 of 1993) [1994] RTR 49*, indicated the approach which the court should adopt in regard to the increased penalty. The court, referring to the previous guideline case of *Reg. v Boswell [1984] RTR 315*, said, at p 56H-L:

'Since Parliament has thought it right and necessary not merely to increase, but to double the maximum sentence for offences under sections 1 and 3A of the Act of 1988, as amended, the guidelines in *Boswell* need to be reconsidered. Clearly the statements of principle in that case, and the examples of aggravating and mitigating circumstances still stand, but at *[1984] RTR 315, 321D*, there appears the following statement: "Drivers who for example indulge in racing on the highway and/or driving with reckless disregard for the safety of others after taking alcohol, should understand that in bad cases they will lose their liberty for two years or more." In our judgment the phrase "two years or more" should now read "upwards of five years," and in the very worst cases, if contested, sentences will be in the higher range of those now permitted by Parliament.'

In our judgment, this is a very bad case. Somebody who goes on a pub crawl, and then gets into the seat of a motor car, drives it off without even putting on the lights, driving it all over the road in an urban area and mounting the pavement and mowing down an innocent member of the public, has committed a very, very serious offence.

In our judgment the sentence passed by the trial judge was unduly lenient, having regard to the penalties which Parliament has recently increased and having regard to the dicta which we have quoted from *Reg. v Shepherd; Reg. v Wernet*.

In our judgment, this was a case which, at first instance, called for a sentence twice that which was imposed by the trial judge. Bearing in mind the element of double jeopardy, which this court always takes into account on references of this kind, we consider that justice will be done here if we increase the sentence to one of five years imprisonment. That will be the effect of this reference.

Leave granted to refer sentence. Sentence of three years imprisonment quashed. Sentence of five years imprisonment substituted

Solicitors for the Attorney General: Crown Prosecution Service, Headquarters
Solicitors for the offender: Waddington & Co, Keighley
Reported by Miss Clare Noon, Barrister

REGINA v VANO
[Attorney General's Reference (No 34 of 1994)]

LORD TAYLOR OF GOSFORTH CJ, JOWITT and CRESSWELL JJ

Dangerous driving – Causing death by – Sentence - Failure to pay attention approaching pedestrian crossing - Other cars stopping for pedestrians – Offender failing to slow down - No other aggravating features - Whether 'momentary reckless error of judgment' – Whether six months imprisonment appropriate sentence – Whether extra jeopardy in return to prison of offender released after serving sentence of 28 days custody – Whether in public interest to return suicide risk offender to prison – Criminal Justice Act 1988 ss 35, 35(1) - Road Traffic Act 1988 s 1 – Road Traffic Offenders Act 1988 ss 33(1), 36(1)(2)(b), 98(3), Sch 2, Pt I, cols 1, 4 – Road Traffic Act 1991 ss 1, 32

Section 35 of the Criminal Justice Act 1988 provides:
'(1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below . . . (3) This Part of this Act applies to any case in which sentence is passed on a person – (a) for an offence triable only on indictment . . .'
Section 36(1) provides:
'If it appears to the Attorney General – (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and (b) that the case is one to which this Part of this Act applies, he may, with leave of the Court of Appeal, refer the case to them to review the sentencing of that person; and on such a reference the Court of Appeal may – (i) quash any sentence passed on him in the proceeding; and (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him . . .'

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 33(1) of the Road Traffic Offenders Act 1988 provides:
'Where a person is convicted of an offence against a provision . . . specified in column 1 of Part I of Schedule 2 to this Act . . . the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence . . .'
Section 36 [*as substituted by section 32 of the Road Traffic Act 1991*] provides:
'(1) Where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test. (2) Subsection (1) above applies to a person who is disqualified . . . on conviction of . . . (b) an offence under section 1 (causing death by dangerous driving) . . .'
Section 98(3) provides:
'In the Schedules to this Act . "RTA" is used as an abbreviation for the Road Traffic Act 1988 . . .'
Part I of Schedule 2 [*as amended by Schedule 2 to the Road Traffic Act 1991*] provides:
'*Column* (1) Provision creating offence . . . RTA section 1 . . . *Column* (2) General nature of offence . . . Causing death by dangerous driving . . . *Column* (4) Punishment . . . five years . . . *Column* (5) Disqualification . . . Obligatory . . .'

The offender was driving his car in a line of traffic as he approached a pedestrian crossing divided by a central reservation. Two girls were crossing the other carriageway and the two cars ahead of the offender's slowed to a halt to allow them to cross the second half of the crossing. The offender, believing the cars were turning left, moved out into the off side lane and continued without slowing down. As one of the girls stepped out from the central reservation she was struck by the offender's car, suffering head injuries from which she died. The offender said that he had not been concentrating and had not seen the girl before his car hit her. Following a trial, the offender was convicted of causing death by dangerous driving. He was remanded in custody pending a pre-sentence report and was then sentenced to 28 days imprisonment, disqualified for three years and, in accordance with section 36(1)(2) of the Road Traffic Offenders Act 1988 (as amended) ordered to retake a driving test; having spent 14 days in custody on remand, he was released immediately on sentence being passed.

On an application by the Attorney General for leave to refer the sentence as being unduly lenient:

Held, granting leave and refusing to vary the sentence, that the present was more than a case of 'momentary reckless error of judgment' and required a custodial sentence (p 20F–H); that the major factor was the failure to look ahead and pay attention in a built-up area when driving in circumstances where the public could be endangered by a loss of attention (p 20J–K); that the sentence of 28 days was unduly lenient and six months would have been appropriate (pp 20K–21A), but that, where an offender had been released after a custodial sentence, there was an extra element to the double jeopardy to be taken into account on an Attorney General's reference (p 21B–C); and that, in the circumstances that the offender was becoming increasingly depressed and might be a suicide risk, the court, as a matter of discretion, would not order his return to prison (p 21G–H).

Reg. v Boswell [1984] RTR 315, CA considered.

Per curiam Whilst the press were the guardians of public interest, to pursue a campaign of vilification of someone who has been before the court is doing no public service. If it is intended to bring pressure to bear on the courts, it is wholly misguided (p 21E–F).

Reference by the Attorney General under section 36 of the Criminal Justice Act 1988

Application for leave to refer sentence

The Attorney General, by amended reference dated 12 December 1994, applied in the following terms to refer a sentence.

'1 The offender's name is Colin Francis Vano. He is 34 years of age having been born on 15 September 1960.

'2 On 15 July 1994, following a trial, he was convicted of one count of causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988. The case was adjourned for the preparation of a pre sentence report and the offender was remanded in custody.

'3 On 29 July 1994 he was sentenced to 28 days imprisonment, disqualified from driving for three years and ordered to retake (*sic*) his driving test. He was also ordered to pay £800 prosecution costs. Having spent 14 days in custody on remand, he was released immediately.

'4 The judge was Judge Collart sitting at the Central Criminal Court.

'5 The facts of the case were as follows. (a) On 5 May 1993 at about 5.30 pm the offender was driving his car west along Main Road, Romford. The speed limit on that road is 30 mph. Visibility and driving conditions were both good. (b) As he approached a pedestrian crossing just before the junction with Balgores Lane two young girls stepped onto the crossing at its northern end. The crossing was divided by a central reservation between the carriageways. A number of cars travelling east along Main Road stopped to allow the girls to cross. (c) Immediately before the crossing the westbound carriageway becomes two lanes. The near side lane is roadmarked to indicate that it is for traffic either turning left into Balgores Lane or intending to continue west along Main Road. The off side lane is marked for traffic intending to take a right turn a little beyond the junction with Balgores Lane. (d) The offender was third in a line of westbound vehicles as the crossing was approached. The two cars in front moved into the near side lane and indicated their intention to turn left into Balgores Lane. Having seen the two girls crossing the eastbound carriageway and reaching the central reservation, both drivers slowed to a halt, one behind the other, to allow the girls to continue crossing over the second half of the road. (e) The offender neither slowed down nor stopped but pulled to the off side to overtake the two vehicles in front of him and approached the crossing without any visible reduction in speed. (f) The victim, Nikki Lockley, who was aged nine, had taken a step off the central reservation as the westbound cars had stopped to let her cross. As she stepped out she was struck by the front off side wing of the offender's car and thrown up into the air. She suffered extensive head injuries and died in hospital a short while after. (g) The offender was interviewed and said that he thought that the car in front of him was either turning left or pulling up. He did not think it had stopped. He had carried on and had not seen the girl before his car hit her. (h) Experts called at the trial agreed that at the point of impact the offender's car was travelling at about 27 mph. (i) At the trial he said that immediately prior to the accident he had been to see a hypnotherapist about losing weight. He said that he had not been concentrating on the road as he had been "excited" about his new diet. (j) The offender is an experienced driver with one conviction in 1990 for failing to comply with a traffic signal and one in December 1992 for exceeding the speed limit. The latter conviction was for travelling at between 46 and 50 mph on Main Road, Romford, about half a mile away from where this offence occurred. He has three convictions for dishonesty and one for assault all between 1978 and 1985. (k) The pre-sentence report emphasised his genuine sense of remorse.

'6 The following aggravating feature appears to be present: the offender has two previous convictions for bad driving within the last four years.

'7 The only mitigating feature present would appear to be the offender's remorse.

'8 It is submitted that the trial judge erred: (a) in concluding that the driving of the offender had been a "momentary reckless error of judgment" – The offender failed to see or take heed of the existence of the crossing, the eastbound traffic which had stopped to allow the children to cross, or the two vehicles in front of him which had also stopped to allow the children to continue across the road. In pulling out to overtake he then failed to see the children in front of him who had been plainly visible to the other drivers at the crossing. The *Highway Code* requires drivers to take particular care when approaching a zebra crossing. Paragraph 71 states "As you approach a zebra crossing, look out for people waiting to cross (especially children and elderly people). Be ready to slow down or stop to let them cross." Paragraph 72 states "You must not overtake on a zebra crossing, including the areas, marked by zig-zag lines." – (b) in giving insufficient weight to the offender's previous driving convictions; (c) in that, having found the offence was so serious that only a custodial sentence was appropriate, it was wrong, in the circumstances of this case, then to impose a sentence which allowed for the immediate release of the offender.

'9 It is submitted that the sentence imposed by the trial judge for an offence of causing death by dangerous driving, when coupled with the aggravating features set out above, was unduly lenient. The sentence fails to reflect fully the gravity of the offence, the need to deter others and the public concern about cases of this kind.

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