SHERIFF APPEAL COURT

[2018] SAC (Crim) 6
SAC/2017/000737/AP

Sheriff Principal M M Stephen QC
Sheriff D C W Pyle
Sheriff P J Braid

OPINION OF THE COURT

delivered by SHERIFF PETER J BRAID

in the Stated Case

PETER COLTMAN

Appellant

against

PROCURATOR FISCAL DUNOON

Respondent

Appellant: Lewis Kennedy; Rubens, solicitors
Respondent: McSporran QC (sol adv), AD; Crown Agent

27 February 2018

[1] On 2 October 2017, the appellant was convicted at Dunoon Sheriff Court, after trial, of a charge of contravention of section 2 of the Road Traffic Act 1988, in the following terms:

> "on 12th March 2017 on a road or other public place, namely the A815 near to Strath Eck Caravan Park, Argyll, you…did drive a mechanically propelled vehicle, namely motor car registered number FE08 VMV dangerously drive at excessive speed and perform an overtake manoeuvre when it was unsafe to do so whereby other road users required to take evasive action to avoid a collision".

[2] The facts as found by the sheriff were that a vehicle, namely the Vauxhall Meriva described in the charge, driven by the appellant on the A815, overtook three cars at

excessive speed whilst approaching the brow of a hill, causing Ross Spiers, who was travelling in the opposite direction, to brake heavily in order to avoid a collision. The appellant's car missed Spiers' car by a matter of feet. The incident occurred at about 6.30 pm on the date libelled. Ross Spiers returned to Dunoon to report the incident to the police, which he did about 20 minutes later. Statements were taken within about half an hour, following which the police went to the appellant's last known address to find that he no longer lived there. As they were driving back, they passed the Vauxhall Meriva, the registration number of which had been given to them, outside the Oakbank Hotel in Sandbank. They entered the hotel where they found the appellant. They made a section 172 requirement of him at 8.13 pm. The appellant's reply was "Me, I was driving". He was cautioned and charged with a contravention of section 2 of the Road Traffic Act 1988 and was then given a warning in terms of section 1 of the Road Traffic Offenders Act 1988, at 8.15 pm. The sheriff also found as a fact (finding in fact 13) that the Police National Computer (PNC) was interrogated and that it revealed that the registered keeper of the car was the appellant's wife. The latter part of that finding was repeated in finding in fact 15, which narrated that according to the V5 registration form (produced by the defence during the Crown case) the appellant's wife was the registered keeper.

[3] The sheriff has specifically found as a fact (finding in fact 11) that all that took place from the time of the incident on the A815 and the report to the police and the discovery of the appellant in the Oakbank Hotel was connected to the incident and that the warning given to the appellant was given at the time the offence was committed. That finding in fact is not challenged by the appellant.

[4] The appeal raises two live issues (the Crown having conceded that evidence about the PNC check carried out by police in the course of their investigations was inadmissible

hearsay) namely: (1) whether the sheriff was entitled to find that the warning in terms of section 1 was given "at the time the offence was committed" and; (2) whether, absent the inadmissible evidence of the PNC check, there was corroboration of the appellant's admission to police that he was the driver of the vehicle at the material time.

[5] We can deal with that second issue shortly. Counsel for the appellant submitted that the evidence of the V5 was insufficient to corroborate the appellant's admission, since it did not provide compelling support for the admission. Reference was made to *Elphinstone* v *Richardson* 2013 JC 29, which counsel distinguished in that there the corroboration consisted of the fact that the appellant himself was the registered keeper. As for the other potential corroborating fact, namely that the appellant was found in the proximity of the car when the police made the section 172 requirement, counsel submitted that there was a physical and temporal disconnect between that and the incident, given that the appellant was not found at the *locus* and that some time had elapsed since the incident had occurred.

[6] We observe that very little was required to corroborate the appellant's admission to police. The appellant was found in the Oakbank Hotel in the proximity of the car which was parked outside, a short time after the incident. Indeed it was the presence of the car outside the hotel which alerted the police to the appellant's presence within. That happened soon enough after the incident, and close enough to it – we are not given distances in the stated case, but we do know that it was in the general vicinity from the fact that the police were on their way back from their visit to the appellant's previous home address – that it is capable of providing the necessary corroboration. That would provide a sufficiency of evidence in itself, but corroboration can also be found in the fact that the registered keeper of the car was the appellant's wife, a close family member. As Lord Carloway stated in *Elphinstone* at paragraph 4 of the court's opinion, and referring to the restatement of the requirement of

corroboration in *Fox* v *HM Advocate* 1998 JC 94, circumstantial evidence need only confirm or support the direct evidence, and need not be more consistent with it than with a competing factual account. The evidence relied on as corroboration in the present case easily satisfies that test. Accordingly, there was sufficient evidence entitling the sheriff to make the findings in fact that he did as to the manner of driving and that the appellant was the driver and, therefore, entitling the sheriff to convict the appellant of the charge.

[7] However, reverting to the first issue raised by the appeal, the sheriff was entitled to convict only if the appellant had received a timeous warning or notice in terms of section 1 of the Road Traffic Offenders Act 1988 and to that issue we now turn.

[8] Section 1 of the Road Traffic Offenders Act 1988 is in the following terms:

> "(1)… A person shall not be convicted of an offence to which this section applies unless:
>
> (a) he was warned at the time the offence was committed that the question of prosecuting him for some one or other the offences to which this section applies would be taken into consideration, or;
>
> (b) within 14 days of the commission of the offence… a complaint… for the offence was served on him, or;
>
> (c) within 14 days of the commission of the offence, a notice of intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was… served on him…"

[9] In the present case, it is not disputed that the appellant did not receive either service of a complaint or of a notice of intended prosecution. He can be convicted only if he was given a warning "at the time the offence was committed". That phrase has often been the subject of judicial consideration, not all of it entirely consistent. The sheriff, in deciding that the warning was given to the appellant at the time the offence was committed, followed *Sinclair* v *Clark* 1962 SLT 307 where it was said that literal compliance was in practice virtually impossible and that there must be some latitude in interpreting it. In that case, LJC

Thomson said that the question was one of fact and degree. That approach has been met with general approval in cases north and south of the border, albeit there have been different ways of expressing it. In *Sinclair* v *Clark* itself, it was said that the chain of circumstance was unbroken and all that took place was connected with the incident. In *Regina* v *Okike* 1978 RTR 489 a slightly different formulation was given by the Court of Appeal, namely that the test was one of reasonableness, although it seems to us that that may be a reference back to LJ Clerk Thomson's reference in *Sinclair* v *Clark* to there being a reasonable latitude, which the Court of Appeal professed to be following.

[10] Counsel for the appellant argued on the basis of these cases that there is a dual or conjunctive test, namely that not only must there be an unbroken chain of circumstances (and the appellant concedes in this case that there was) but also an additional test of reasonableness. However, in our view, that is to read too much into the cases. Rather, there is one test, which is one of fact, and is simply whether, applying reasonable latitude, the warning can be said to have been given at the time of the accident. In considering what is reasonable latitude, no doubt regard will be had to whether there was an unbroken chain of circumstances although that can never be the only factor and the passage of time must also be relevant. Were there to be a complicated and unbroken police investigation lasting several days, for example, it is difficult to envisage that any warning given thereafter could ever be said to be at the time of the offence. The important point to note however is that it is a question of fact and degree in every case.

[11] In the present case the sheriff did not misdirect himself. Rather, it is clear from his reasoning at paragraph 3 of his Note, on page 11 of the stated case, that he correctly applied the law as set out in *Sinclair* v *Clark.* He was therefore entitled to find in fact, as he did, that the warning was given at the time of the offence.

[12] Accordingly, the appellant must fail on that issue also.

[13] We will therefore answer question 1 in the stated case in the negative and the remaining questions in the affirmative.