R v BANNISTER [2009] EWCA 1571

Police Officers Driving Dangerously

In January 2008 an experienced Road Traffic Police Officer, joined the motorway in South Wales and accelerated from 88 mph to 120 mph. It was raining hard, dark and there was surface water on the road. The officer said he saw the water but did not consider it deep. He was travelling at over 110mph when the vehicle aqua-planed and crashed. The officer was not seriously injured but the vehicle was extensively damaged.

The officer was charged with dangerous driving. There was question as to whether the officer was responding to an emergency call or whether that response had concluded. Whether the officer was on an emergency call or not would have been irrelevant to the issue of dangerous driving.

No emergency or police duty permits a police officer to drive dangerously.

The officer had previously successfully completed an advanced driving course which taught him to drive at very high speeds. He was an advanced driver and was posted as a road traffic officer. He argued that his training and new skills enabled him to drive at excessive speeds. That evidence was said to be relevant to the issue of whether he was driving dangerously on the basis of a decision of the Administrative Court in *Milton v CPS* [2007] EWHC 532 (Admin).

The officer was convicted of dangerous driving and sentenced to 20 weeks imprisonment. He was also disqualified from driving for two years and required to pass an extended driving test. He appealed against conviction and sentence. He was released on bail, having served 20 days imprisonment.

His appeal against sentence resulted in a fine of £50 for the sentence of imprisonment and a disqualification from driving of 12 months. The Court substituted what was described as a 'nominal fine' due to the fact that the officer had spent time in prison.

The appeal against conviction for dangerous driving was allowed and the court substituted a conviction for careless driving. The period of disqualification was reduced to 3 months and quashed the requirement for the officer to take an extended driving test.

***Milton v CPS* [2007] EWHC 532 (Admin)**

Milton, a police officer was a Grade 1 advanced driver. He was tried for dangerous driving after driving at very high speeds on ordinary roads to practice his driving skills. His driving on a motorway at a speed of nearly 150 mph. He was ***acquitted*** of dangerous driving. The prosecutor appealed. The Divisional Court allowed the appeal and remitted the matter back to the Magistrates' Court. One question was whether the Magistrates' Court had been correct in taking into account the driving skills of PC Milton when considering whether the driving was dangerous. The District Judge had imported a subjective element into the test of dangerous driving. **He was wrong in law to have done so.**

On the re-hearing in the Magistrates' Court, PC Milton was convicted of dangerous driving before District Judge Hollis. ***The Judge concluded that the test was an objective one and no account should be taken of the experience or inexperience of the driver***. The fact that PC Milton was a Grade 1 advanced police driver ***was not*** a 'relevant circumstance' within the Road Traffic Law. A further appeal by way of case stated was made to the Divisional Court.

The main question before the court was whether the advanced driving skills of the officer were a 'relevant circumstance'. In giving the first judgment, the conclusion that the special driving skills of the police officer ***were*** a relevant consideration.

In giving the second judgment the court contended that the decision in *Milton* was correct. It was right in principle that circumstances favourable to a driver should be taken into account in the same way as circumstances such as drunkenness or illness which were unfavourable. Such circumstances could be taken into account without in any way affecting the objective test.

The Court of Appeal did not agree.

Bannister - The summing-up

The Appeal Court reached the conclusion that the Judge was incorrect in taking into account the decision in *Milton* and summing up on that basis more favourably to the officer than the law permits. The Court pointed out, it was irrelevant as to whether the officer had or had not been on police duty at the relevant time. ***Police Officers are not entitled to drive dangerously when on duty or responding to an emergency***. There was a real and substantial risk that the jury in the original trial were confused by the summing-up as to the proper way in which the clear test set out in the statute should have been applied. The Crown now accepted that a conviction for ***dangerous*** driving would not be safe in the circumstances.

It was accepted by PC Bannisters counsel that in any re-trial, a conviction for careless driving would be inevitable. He contended, however, that there should be no re-trial on the issue of whether the driving was dangerous, bearing in mind the sentence of imprisonment that the serving police officer had undertaken. The Crown accepted that no useful purpose would be served by a re-trial. In those circumstances, the Court of Appeal quashed the conviction for dangerous driving, did not order a re-trial but substituted a conviction for careless driving.

Sentence

The Court did not change the financial penalty of £50 and substituted a period of three months disqualification rather than the 12 months. The officer was not required to take an extended driving test.