SHERIFF APPEAL COURT

[2016] SAC (Crim) 16
SAC/2016/000169/AP

Sheriff Principal C A L Scott QC
Sheriff J Morris QC

OPINION OF THE COURT

delivered by the Vice President, SHERIFF PRINCIPAL C.A.L. SCOTT QC

in

APPEAL AGAINST SENTENCE

by

NATASHA WATT

Appellant

against

PROCURATOR FISCAL, ABERDEEN

Respondent

Appellant: McCall QC; John Pryde & Co
Respondent: Carmichael, AD; Crown Agent

4 May 2016

[1] The appellant, who at the time of the offence was a serving police officer, pleaded guilty to a contravention of the Road Traffic Act 1988, section 2 as amended.

[2] The appellant had been driving a police vehicle. She and her colleague were en route to an emergency call. During the journey they received a "distress call". Those officers already in attendance at the appellant's intended destination were seeking urgent assistance. The appellant and her colleague were the only officers asked to attend to provide assistance. In mitigation, the sheriff had been informed that the "distress" of the officer making the call was such that the appellant had heard the officer scream.

[3] At paragraph [9] in her report, the sheriff narrated the circumstances of the collisions detailed in the charge. In responding to the distress call, the appellant had only activated the flashing blue lights on the police vehicle. She had inadvertently failed to activate its siren.

[4] Senior counsel for the appellant emphasised that as the appellant had approached the junction in question the speed of her vehicle was approximately 15 mph. She had slowed the vehicle down to 10 mph as she passed through the red light at the junction. Senior counsel pointed out that emergency vehicles such as that being driven by the appellant are permitted to proceed through a red light provided they proceed as if it were a "give way" scenario. That was how the appellant had approached her entry to the junction.

[5] Against that background, the sheriff rejected the proposition that special reasons existed as to why the appellant should not be made subject to the mandatory minimum 12 month disqualification period. Senior counsel for the appellant, in criticising the sheriff's approach, elaborated upon her written arguments in support of the appeal.

[6] Senior counsel maintained, at the outset of her submission, that the sheriff ought to have adopted a two-stage approach. The existence or otherwise of extenuating circumstances firstly required to be considered. Where such circumstances were found to exist the court then required to take them into account. Senior counsel contended that the

sheriff only appeared to have taken into account the fact that the appellant had been responding to an emergency call.

[7] In determining whether special reasons had been made out in the present case, the question which the sheriff ought to have addressed was whether it was more likely than not that the emergency nature of the distress call to which the appellant had been ordered to respond and to which she and her colleague were the *only* officers responding (viz. the extenuating circumstances) was directly connected to the manoeuvre at the junction (viz. the commission of the offence). Senior counsel submitted that, if the sheriff was so satisfied, she ought then to have considered whether the circumstances were such that the court ought properly to take them into account.

[8] Senior counsel argued that, on any view of matters, the appellant had, in a very short space of time, found herself at the heart of a situation imbued with great urgency. It was, she submitted, reasonable to infer that the appellant must have feared for the safety of the police colleague who had summoned her assistance. The manoeuvre she undertook in these circumstances was dangerous owing to the fact that she had been compelled to enter what senior counsel described as a "blind junction" and that, whilst the vehicle's blue lights were on, the appellant had omitted to press the second button which would have activated the vehicle's siren. Other vehicles approaching and entering the junction were consequently deprived of being alerted by the sound of the siren.

[9] Senior counsel referred to paragraph [24] onwards in the sheriff's report. She maintained that there was nothing to indicate in what way the sheriff had applied her mind to whether the extenuating circumstances (viz. the emergency) were directly connected to the commission of the offence. Put another way, senior counsel contended that the sheriff had failed to consider whether, but for the appellant having been ordered to respond to the

distress call, the appellant would probably not have embarked upon the manoeuvre at the junction.

[10] Reference was made to the sheriff's response to the grounds of appeal at paragraph [26] in her report. That response, senior counsel argued, overlooked the fact that the offending conduct consisted of a momentary piece of driving which in turn gave rise to the danger. Contrary to the sheriff's approach, senior counsel submitted that the use of the blue flashing lights ought to have been viewed as a positive feature. It had been an attempt by the appellant to make the police vehicle more visible to other road users.

[11] The sheriff's reliance, as seen from paragraph [27] in her report, upon the fact that the appellant was not an authorised emergency driver was also criticised by senior counsel. She submitted that the status of the driver was not the pertinent issue. What mattered were the driver's actual conduct and the circumstances giving rise to that conduct. Senior counsel once again stressed that the appellant and her colleague formed the only police unit deployed to respond to the distress call *and* the appellant was aware of that fact.

[12] To that extent, the circumstances of the appellant's offending were no different, submitted senior counsel, to those in the cases of *Husband* v *Russell* 1997 SCCR 592; 1998 SLT 377 and *R* v *Lundt-Smith* [1964] 2 QB 167. It had been wrong for the sheriff to distinguish these cases owing to a lack of emergency driver accreditation on the part of the appellant. The case of *Lundt-Smith* was an example of special reasons being held established in the context of an emergency even where the driving in question gave rise to the most serious of consequences. Senior counsel submitted that there were parallels between the present case and that of *Lundt-Smith*.

[13] Senior counsel submitted that the sheriff ought to have concluded that public safety would not be imperilled by this appellant being allowed "to remain on the road". The

sheriff's approach was also criticised to the extent that she had overlooked the existence of those (numerous) cases where special reasons had been held established for ordinary citizens who merely perceived themselves to be acting in an emergency situation.

[14] Reference was also made to the case of *Tedford* v *Dyer* 2006 SCCR 285 where special reasons were made out for an appellant who drove his friend to hospital in a situation which was not a critical emergency and where there were other options available to the appellant. In *Tedford*, the court noted that "…*some account must always be taken of the fact that, when faced with an anxious and unexpected situation, people may sometimes react, with the best of intentions at the time, in a manner which, viewed in retrospect, and in the cold light of day, might have been considered to have been unwise.*" (See paragraph 13).

[15] In the case of *Robert John O'Toole* (1971) 55 CR App R 206 the court of appeal had approved the first instance decision in *Lundt-Smith*. At page 210 in the *O'Toole* case, Sachs LJ stated the following:

> "Each case naturally falls to be determined on its own facts and of course nothing in this judgment is intended to suggest that driving which is careless or reckless can in any circumstances be condoned by the courts. On the other hand it is for courts when imposing sentences in cases such as the present one to recognise that balance which must be maintained in the interests of the public between the essential element of not unnecessarily impeding the answering the cause of humanity in emergencies and that of not involving road users in unnecessary risks. Great care has to be applied in determining on which side of the line a case falls. The tensions under which drivers of ambulances and fire engines have to work must not be overlooked and it is within the knowledge of the court from other cases that any imposition of ill-judged penalties naturally tends, in detriment of the public interest, to cause unrest in the services on which everyone depends for rescue."

Decision

[16] The sheriff's "sentencing" reasons are to be found at pages 8 and 9 of her report but particularly within paragraph [24]. She appears to have arrived at the view "…that it was

not inexpedient to inflict punishment on" the appellant. We observe, firstly, that that does not appear to be a useful approach to the issue which faced the sheriff, viz. whether special reasons had been established in all the circumstances of the case.

[17] At all odds, it is plain that the sheriff placed much weight upon the fact that the appellant was not an accredited emergency driver. To our mind, in the circumstances of this case at least, that was an irrelevant factor. We agree with senior counsel for the appellant's submission to the effect that what properly fell to be considered by the court were the appellant's actual conduct and the circumstances in which that conduct took place.

[18] The sheriff also stressed the facts that the appellant had pleaded guilty to section 2 of the Road Traffic Act 1988 and that dangerous driving is a serious offence. Neither of these observations can be gainsaid. However, it will very often be the case that the court is called upon to consider the issue of special reasons where serious offences have been committed, the case of *Lundt-Smith* being an example. It is reasonable to anticipate that such cases will often involve contraventions of section 2 of the 1988 Act. Accordingly, once again, we conclude that the sheriff relied upon a feature which was entirely neutral when the establishment or otherwise of special reasons came to be considered.

[19] The sheriff was also wrong to distinguish the cases of *Husband* v *Russell* and *Lundt-Smith* "…because in those cases the drivers appeared to have been properly qualified emergency drivers…" In our view, as in *Husband* v *Russell*, the appellant's manoeuvre through the junction was embarked upon and executed precisely because she was involved in an emergency journey in which it was, at the very least, important for the appellant and her vehicle to arrive at the locus from where her distressed police colleague had already summoned urgent assistance. (See Lord Prosser at page 595).

[20] On the factual matrix presented to the court and in light of the observations set out in the various authorities we have reached the conclusion that the sheriff's approach to the matter cannot be supported. For our part, we are satisfied that the appellant would probably not have entered the junction in the face of a red light were it not for the emergency nature of the mission she was undertaking. In other words, the extenuating circumstances generated by the emergency were, to our mind, unquestionably connected to the commission of the offence. Whilst the appellant did, indeed, plead guilty to a charge of driving dangerously, it was a momentary failing on the part of the appellant which created that offence. It may have been unfortunate that the appellant overlooked to activate the vehicle's siren but in driving as she did she had in mind the safety of other road users; she activated the vehicle's blue lights and significantly reduced the speed of the vehicle. Against that background, it is, in our opinion, eminently open to this court to determine that special reasons ought to have been held established by the sheriff. That being so, we have quashed the disqualification imposed at first instance.

[21] In inviting us to remit the entire period of that disqualification, senior counsel reminded us that the court would then be obliged to endorse the appellant's licence with anything between 3 and 11 penalty points. We were informed that the appellant is a "new driver" and that she would lose her licence were anything from 6 penalty points upwards to be imposed. A letter from the appellant's new employers dated 28 April 2016 was provided for the court. It was explained that the appellant's journey to and from her place of employment each day would involve a time consuming trip using public transport. Her employers, the letter told us, regarded the appellant as a valued employee and would be concerned that her employment might be compromised were she not in a position to drive to her place of work.

[22] In these circumstances, therefore, we have decided that the appellant's licence should be endorsed with 5 penalty points.