SHERIFF APPEAL COURT

[2019] SAC (Crim) 8
SAC/2019/000293/AP

Sheriff Principal M M Stephen Q.C.
Appeal Sheriff P J Braid
Appeal Sheriff N McFadyen

OPINION OF THE COURT

delivered by SHERIFF PETER JOHN BRAID

in the appeal by Stated Case

MARK McLAUGHLIN

Appellant

against

PROCURATOR FISCAL PERTH

Respondent

Appellant: Lenehan; Faculty Appeals for Ward & Co
Respondent: Kearney (sol adv), AD; Crown Agent

14 August 2019

[1] This is an appeal by stated case against the appellant's conviction of a contravention of section 2 of the Road Traffic Act 1988 ("the 1988 Act"). The appeal raises two issues. The first, to which the first three questions in the stated case relate, is whether the sheriff was entitled to find that an accident had occurred owing to the presence on a road of a vehicle

driven by the appellant, such that the provisions of section 1 of the Road Traffic Offenders Act 1988 did not apply, by virtue of the terms of section 2 of that Act.

[2] The second issue is whether, if the sheriff was entitled to find that an accident had occurred, he was entitled to find that the appellant's driving amounted to a contravention of section 2, as opposed to section 3, of the 1988 Act.

[3] The salient findings in fact made by the sheriff are as follows:

> 1. On 27 May 2018 at around 5.30 pm [the complainer[1]] was driving a Ford Transit camper van containing his wife and two children from Blair Atholl northwards on the B8079 intending to join the A9 at the 'House of Bruar' junction.
> 2. On approaching said junction [the complainer] pulled in behind a vehicle which was waiting at said junction to join the A9. Once the said vehicle had moved off, [the complainer] moved forward and stopped at said junction. He positioned the said camper van to the right of said junction as he intended to execute a right turn at the said junction to enable him to drive northwards on the A9.
> 3. The A9 is a major trunk road taking traffic to and from central Scotland and the Highlands.
> 4. Before pulling out from the said junction in said camper van, [the complainer] checked both right and left. He considered it was then safe to emerge from said junction and execute his right turn to join the north bound lane of the A9.
> 5. In emerging from the said junction he pulled into the path of a Honda Civic motorcar… driven by the Appellant southwards on the A9. In doing so he created a prospect of a collision taking place between the two vehicles. As a result the Appellant braked sharply to avoid a collision and sounded the horn of said car for a number of seconds. He brought his car to a halt just at the southern end of said junction.
> 6. [The complainer] completed his right turn manoeuvre and in response to the appellant sounding his horn put his hand out of his driver's window and made a rude gesture.
> 7. The Appellant, immediately after coming to a halt, executed a U-turn and commenced driving northwards on the A9 to follow the said camper van. To catch up with the said camper van, which was travelling at around thirty miles per hour, the Appellant accelerated quickly. He then overtook the said camper van, pulled in front of the said camper van, and braked harshly bringing his said car to a halt in front of the said van.

[1] Although not strictly a complainer in the section 2 charge, as the driver of the camper van was also the victim of an assault by the appellant, with which this appeal is not concerned, we use the term "complainer" for convenience.

> 8. As a result of the actions of the Appellant, [the complainer] required to execute an emergency stop to avoid colliding with the rear of the Appellant's car. He came to rest a very short distance from the rear of the said car.
> 9. Once the said camper van came to a stop, the appellant alighted from the driver's seat of the said car and walked to the driver's door of the camper van. He was angry. The appellant confronted [the complainer], who remained seated in the driver's seat of said camper van. Words were exchanged between the two males and the Appellant leant through the driver's window of the said camper van and slapped [the complainer] on the face, knocking off his spectacles.

[4] On the basis of those findings in fact, the sheriff repelled a defence submission of no case to answer in terms of section 160 of the Criminal Procedure Scotland Act 1995, founded upon a failure to comply with the provisions of section 1 of the Road Traffic Offenders Act 1988 in that the appellant was neither warned at the time of the offence, nor had a complaint or notice of intended prosecution been served on him within 14 days. In reply, to the submission, the Crown referred to section 2 of that Act, in terms of which there is no requirement to comply with the provisions of section 1 if an accident had occurred. It submitted, under reference to *Pryde* v *Brown* 1982 SCCR 26, that the appellant's actions in overtaking the camper van driven by the complainer and pulling in sharply before braking harshly, causing the complainer to execute an emergency stop, constituted an accident. The sheriff repelled the defence submission, his reasoning being as follows:

> "The Appellant, by acting in the manner described by [the complainer and his wife], had forced [the complainer] to do something he would not otherwise have done. [The complainer] had had to execute an emergency stop to avoid the camper van in colliding with the rear of the Appellant's vehicle. It was patently obvious that he would not have taken that action but for the actings of the Appellant and the consequential presence of his car on the A9. Accordingly, the circumstances fitted exactly with what their Lordships envisaged in *Pryde* v *Brown".*

[5] Having heard defence evidence, the sheriff then convicted the appellant of a contravention of section 2 of the Road Traffic Act 1988. Having dealt with issues of

credibility and reliability which do not arise in this appeal, the sheriff referred to the terms of sections 2 and 2A of the 1988 Act. He concluded that the way in which the appellant drove at the material time both fell far below what would be expected of a competent and careful driver, and that it would be obvious to a competent and careful driver that driving in that way would be dangerous. In reaching that conclusion, the sheriff relied upon the facts (a) that the incident occurred on the major trunk road taking traffic to and from Central Scotland and the north, which generally carries a heavy volume of traffic; and (b) that the appellant had overtaken the vehicle driven by the complainer before pulling in and braking harshly, causing the appellant to execute an emergency stop. The sheriff therefore convicted the appellant of the contravention of section 2.

[6] Counsel for the appellant submitted that the sheriff had erred both in holding that an accident had occurred and in finding that the driving constituted a contravention of section 2 of the 1988 Act. Dealing first with the approach to whether or not there had been an accident, counsel argued that the sheriff had done precisely what the High Court said in *Pryde* v *Brown* should not be done, *viz*, to apply a test namely whether the appellant by his driving had caused the complainer to do something which he otherwise would not have done. Rather, as the court said in *Brown*, each case turned on its own particular circumstances and the test was one of common sense rather than conformity with a definition. Counsel also referred to *Bremner* v *Westwater* 1994 SLT 707. He contrasted the facts in those two cases with the facts here. In each of *Pryde* and *Bremner* it could be said, taking a common sense approach, that there had been an accident. In *Pryde*, two pedestrians had been forced to take evasive action by getting off the carriageway to avoid being hit. In *Bremne*r, the complainer had had to slam on his brakes such that smoke was seen to come

from his car's tyres and his car had in effect been driven off the road onto the verge by the dangerous driving of the other driver. In the present case, where the complainer had not had to leave the carriageway but had simply had to bring his own car to a halt, it could not be said on a common sense view that that amounted to an accident. Were it otherwise, every time a driver had to slam on the brakes (a common occurrence) there could be said to have been an accident. There was a distinction between a happening and an accident. This had not been a high speed event and it had not involved a loss of control. No thing or person had to leave the carriageway.

[7] Turning to the quality of the driving, counsel for the appellant submitted that having regard to the speed (30 miles per hour), the absence of loss of control and the absence of evidence of other traffic on the road at the time, the appellant's driving did not amount to a contravention of section 2, although he conceded that it would be a contravention of section 3 of the 1988 Act.

[8] In reply, the advocate depute, for the respondent, submitted that the sheriff had not erred. *Pryde* v *Brown* was authority for the proposition that the sheriff was entitled to look at the whole circumstances, which was what the sheriff here had done. The question was whether, on the findings in fact, he was entitled to find that an accident had occurred. Having regard to the evidence and findings 7 and 8, in particular the finding that the complainer had to perform an emergency stop, the sheriff was entitled to find that the particular circumstances could be described as an accident. The camper van being driven by the complainer was effectively required to brake so sharply that it was only an emergency stop which prevented a collision by the narrowest of margins.

[9] As regards the standard of driving, deliberately forcing another vehicle to take evasive action on a major trunk road was eloquent of driving falling far below that of a competence and careful driver.

[10] The starting point is to have regard to what the High Court did in *Pryde* v *Brown* which was to consider various tests which had been applied in English cases, before deciding that none was wholly satisfactory in every circumstance. Thus, the court observed that an accident could not simply be an unintended occurrence, since the word may include occurrences which were intended. Similarly, an accident could not be limited to untoward occurrences having an adverse physical result, because it was possible to visualise an accident having no adverse physical result at all. It was against that background that the court said that it was more appropriate to have a case by case, or common sense, approach. Not only did the court go on to refer to the complainers in that case having been forced to do something they would not otherwise have done, they pointed out that if they had been injured in so doing, it could not be said that an accident had not occurred.

[11] While the sheriff in the present case has ostensibly come close to applying a test, by referring to the "definition" of accident at page 14 of the stated case, that word appears in the context of his summary of the Crown submissions. In the following paragraph, although the sheriff refers to the complainer doing something he would not otherwise have done, he nonetheless goes on to say that the circumstances fit exactly with what their Lordships envisaged in *Pryde* v *Brown*. It is always legitimate to compare the facts of one case with those of another in deciding whether a particular incident can or cannot be categorised as an accident. In the present case, it was not so much that the complainer had to do something which he would not otherwise have done which is significant; but the fact that what he had

to do was to execute an emergency stop. That occurrence does enable a valid comparison to be drawn between this case and *Pryde* v *Brown*. It can be said no less in this case than in *Pryde* v *Brown* that if the complainer or his passenger had been injured (for example by banging their head on the windscreen due to the force of the stop) it could not be suggested that there had not been an accident. As soon as it is accepted (as it must be in light of *Pryde* v *Brown)* that adverse physical consequences are not required for there to be an accident, any initial reaction one may have that there had merely been a near-accident is dispelled. The defining feature of the present incident in our view was not simply that the complainer had to stop quickly or that he would not otherwise have had to stop at all, but that what he had to do was to perform an emergency stop. That conveys, in colloquial terms, that he had to "stand on the brakes". In the context of a busy trunk road where one would not normally come to a stop (in contrast, say to a junction in town controlled by traffic lights) that does constitute an accident within the meaning of section 2 of the Road Traffic Offenders Act 1988, and we have concluded that the sheriff did not err in holding that there had been an accident.

[12] Questions 1-3 in the stated case therefore fall to be answered in the affirmative.

[13] Turning to the second issue, whether or not the driving amounted to a contravention of section 2 of the Road Traffic Act 1988, we can deal with this in short order. We refer again to the fact that as a consequence of the appellant's driving, the complainer required to execute an emergency stop, on a normally busy trunk road. This was not as a result of mere inadvertence on the appellant's part, but followed his deliberately driving after the appellant, cutting in front of him and forcing him to stop, in what can clearly be seen, from the findings in fact, to be a road-rage incident. In our view that does fall far below the

standard to be expected of a competent and careful driver, and it would be obvious to such a driver that driving in that way would be dangerous. Accordingly, the sheriff correctly found the appellant guilty of the contravention of section 2 and question 4 together with the remaining live questions in the stated case, 6 and 7 fall to be answered in the affirmative.

[14] The appeal is refused.