SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.7 OF 2003

BETWEEN:

EGBERT HANLEY

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Mr. Adrian Saunders	Chief Justice [Ag.]
The Hon. Mr. Brian Alleyne, SC	Justice of Appeal
The Hon. Mr. Hugh Rawlins	Justice of Appeal [Ag.]

Appearances:

Dr. Henry L.O.S. Browne for the Appellant
Mr. Dennis Merchant, D.P.P. and Ms. Janine Harris for the Respondent

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2004: July 26;
September 20.

JUDGMENT

[1] ALLEYNE, J.A.: On 10th April 2003 at the Assizes in Nevis the Appellant was convicted after a three-day trial before a jury of the offence of causing death by dangerous driving. He has appealed against his conviction and in his Notice of Appeal pleaded four grounds of appeal. At the hearing of the appeal he sought and obtained leave, without objection by the Director of Public Prosecutions, to add a further ground, numbered 3A. Learned Counsel for the Appellant argued only grounds 3 and 3A.

[2] The grounds argued were:

> 3. The learned trial Judge erred in law in his failure to give a full and balanced summing-up to the prejudice of the Appellant.

> 3A. The learned trial Judge failed to direct or adequately explain to the jury the distinction between causing death by dangerous driving and how to distinguish that driving from other forms of unlawful driving.

[3] The Appellant was a Prison Officer and on 28th May 2002 he was assigned to drive five prisoners from the prison on Nevis to Charlestown on the Prison's Land Rover vehicle. The prisoners rode on the back seat of the vehicle, while the Appellant was accompanied by fellow Prison Officer James Browne, who rode on the front passenger seat. Neither officer was armed, and there was no suggestion throughout the trial that the prisoners posed any danger or were liable to attempt an escape.

[4] While the Appellant was driving along a road known as Cottle Long Path, he tried to overtake a car which was being driven ahead of him, in the same direction, by Thelma Hunkins. As the Appellant was making the attempt to overtake, the Land Rover touched the car. The Appellant pulled away from the car and the offside front wheel of the Land Rover ran off the side of the road onto the curb. The Appellant tried to bring the vehicle back on the road and in doing so, lost control. The Land Rover flipped, overturning three times, and ended up on its side. The Appellant and most of the other occupants of the Land Rover were thrown clear, but the Prison Officer James Browne and one of the prisoners, Steve Christopher, were pinned under the overturned vehicle. Browne was pulled clear but Christopher died in the fire which consumed the overturned vehicle.

[5] In his direction to the jury on the issue of dangerous driving the learned trial Judge said this:

> "In order to justify a conviction on dangerous driving there must be not only a situation which objectively was dangerous but there must also have been some fault on the part of the driver causing that situation.
>
> "Fault indicates a failure of falling below the care or skill of a competent and experienced driver in relation to the manner of the driving and to the relevant circumstances of the case including the nature, condition and use of the road and the amount of traffic which was actually at the time or

> which might reasonably be expected to be on the road. Such fault will often be proved adequately by inference from the facts of the situation.
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> "Dangerous driving requires proof that the manner of driving was dangerous to the public. If a man adopts a manner of driving which you the jury think was dangerous to the other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless or momentarily inattentive or even doing his incompetent best."

[6] Learned Counsel for the Appellant criticized this direction as inadequate and wrong in law. Counsel submitted that it was imperative that the jury be specifically directed as to the criteria to be applied and the distinctions to be observed in determining whether any particular speed or manner of driving can have the quality of being dangerous to the public within the meaning of the section, and that the particular features of driving charged as being in breach of the section be isolated for the jury and related to these criteria.

[7] In the St. Lucian case of Flavius v R[1] this Court considered the test to be applied when considering a charge of causing death by dangerous driving under provisions such as that in this case. Sir Vincent Floissac, C.J. held that in such a case the proper direction to the jury must be by reference to the circumstances from which the section prescribes that dangerous driving should be inferred, that is to say, 'all the circumstances of the case including the nature, condition and use of the road and the amount of traffic which was actually on the road at the time or which might reasonably be expected to be on the road.'

[8] Byron J.A., as he then was, held[2] that under the relevant provision dangerous driving 'requires proof only that the manner of driving was dangerous to the public for as long as the driver was conscious of what he was doing; it is unnecessary that he was conscious of the possible consequences of his driving.' His Lordship quoted Lord Diplock in R. v Lawrence[3]. Lord Diplock referred to the decision in

[1] (1992) 41 WIR 114
[2] *ibid.* at page 120
[3] [1981] 1 All E.R. 974

R. v Evans[4] and declared that the Court of Criminal Appeal in that case 'for practical purposes abolished the difference between the standard of driving in careless driving and that involved in dangerous driving where danger to the public did in fact result.' In Evans the direction of the trial Judge that 'in law it is now well settled that if the driving is in fact dangerous, and that dangerous driving is caused by some carelessness on the part of the accused, then however slight the carelessness, that is dangerous driving' was approved on appeal, the Court saying 'if a man adopts a manner of driving which the jury thinks was dangerous to the other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best.'

[9] Joseph J.A. (Ag.), as she then was[5], quoted the approved direction in cases under this provision as set out in the case of Evans to the effect that 'a very good test is for the jury to make up their minds on the evidence what actually happened, and in their minds' eye to put themselves down at the scene of the accident, and to ask themselves this question, 'Had we seen this should we have said without any doubt it was a dangerous piece of driving?' If the answer to the question is 'yes', then the man is guilty, and if the answer to the question is 'Oh no', or 'We cannot be sure', then he is not guilty.' It was laid down in Evans and approved in Flavius that it is for the jury, representative of the public, to set the standards. In this the members of the Eastern Caribbean Court of Appeal comprising the Coram in Flavius were unanimous. The learned trial Judge in the case before us, having reviewed all the evidence for the prosecution, used precisely this formula in putting the question to the jury, at page 31 of the record.

[10] Learned Counsel urged that it ought to have been specifically brought to the attention of the jury by the learned trial Judge that the Appellant was transporting unguarded and unsecured convicts in the back of the vehicle, and consequently

[4] [1962] 3 All E.R. 1086
[5] [1992] 41 WIR 114 at page 121 – 122

that common sense and law required that he drive as speedily as was prudent in those circumstances. There was no evidence or suggestion whatsoever at the trial that the prisoners being transported were in any way dangerous, or that there was any expectation that any of them might attempt an escape. There was no basis on the evidence for the learned trial Judge to direct the jury that the Appellant had cause to drive in any but the manner of a normal prudent and competent driver going about his normal business.

[11] Learned Counsel urged that there was one vehicle ahead of the Appellant on a long stretch of road, giving the Appellant a clear view, and thus it was obviously clear and safe to overtake, especially as the vehicle ahead was traveling at 35 – 40 miles per hour, within the speed limit. Counsel argues that in these circumstances the manner of driving was not potentially dangerous to the public.

[12] Learned Counsel further urged that it was incumbent on the learned trial Judge to explain to the jury that this quality of being dangerous to the public in the speed or manner of driving does not depend upon resultant damage. It is not the result which gives the driving the quality of being dangerous.

[13] It is our view that the learned trial Judge adequately placed all the evidence before the jury and gave them a clear and correct direction on the proper approach to determining the issue of guilt or innocence. The jury had ample evidence on which they could reasonably have come to the conclusion to which they came. This evidence included the circumstances that the Appellant was driving at an excessive speed (one witness said 60 – 70 MPH); the road was wet; and, notwithstanding the fact that the driver of the vehicle in front pulled away to give him room to pass, he still struck that vehicle.

The appeal is therefore dismissed, the conviction and sentence are affirmed.

Brian Alleyne, SC
Justice of Appeal

I concur.

Adrian Saunders
Chief Justice [Ag.]

[Sgd.]
I concur.

Hugh Rawlins
Justice of Appeal [Ag.]