BUCKLE v. COMMISSIONER OF POLICE

SUPREME COURT (Dobbs, J.): September 21st, 1965
(Mag. App. No. 23/65)

[1] **Constitutional Law — fundamental rights—protection of law—retrospective penalties—severer penalty enacted for offence—offence committed earlier attracts original penalty:** Where an enactment creating an offence has been repealed and re-enacted with heavier penalties, an offence committed before the repeal should be punished in accordance with the repealed enactment (page 268, lines 19–25).

[2] **Courts — Supreme Court—appeals from magistrates' courts—amendment of original proceedings—Supreme Court may amend summons in magistrate's court laid under repealed instead of re-enacting statute:** Where an appellant has been convicted in a magistrate's court upon a summons for an offence enacted by a statute which was repealed and re-enacted after the offence was committed but before the summons was issued, the Supreme Court may properly rectify the conviction by amending the summons under s.7(6) of the Courts (Appeals) Act, 1960 if the appellant will not be prejudiced thereby (page 268, lines 21–32).

[3] **Criminal Procedure—sentence—severer penalty enacted for offence—offence committed earlier attracts original penalty:** See [1] above.

[4] **Evidence—judicial notice—reference books—English Highway Code—court may refer to table of stopping distances:** While the English Highway Code does not apply in Sierra Leone, the figures in the table of stopping distances in the code are valid anywhere and may be referred to for the purpose of verifying a motor vehicle's stopping distance at a particular speed (page 270, lines 2–7).

[5] **Evidence—speed—figures for stopping distances in English Highway Code valid in Sierra Leone:** See [4] above.

[6] **Evidence—speed—stopping distance not ipso facto evidence of high speed:** The distance in which a vehicle is brought to a stop after a collision is not *ipso facto* evidence of high speed (page 269, lines 1–2).

[7] **Road Traffic—speed—evidence of speed—figures for stopping distance in English Highway Code valid in Sierra Leone:** See [4] above.

[8] **Road Traffic—speed—evidence of speed—stopping distances not ipso facto evidence of high speed:** See [6] above.

[9] **Statutes—operation—retrospective effect—repeal and re-enactment of criminal statute after offence and before summons—summons lies under re-enacting statute:** Where an enactment creating an offence has been repealed and re-enacted in the same words, an offence

committed before the repeal should, if prosecuted upon a summons issued after the repeal, be prosecuted under the repealing enactment (page 268, lines 19–22).

[10] **Statutes—operation—retrospective effect—repeal and re-enactment of criminal statute with severer penalty—offence committed before repeal punishable under repealed provisions:** See [1] above.

The appellant was summonsed before a magistrate's court on a charge of driving without due care and attention contrary to s.43(1) of the Road Traffic Act (*cap.* 132).

In October 1964 the appellant was driving a motor car through a crowd when he knocked over a boy. According to the defence evidence the boy suddenly jumped in front of the car but there was no evidence how far he was from the car when he jumped. The only prosecution evidence as to how the appellant was driving was evidence that the car travelled about 25 yds. from the point of impact before stopping. The appellant said that it travelled 5 ft. before stopping and that its speed before it hit the boy was between 10 and 15 m.p.h.

The Road Traffic Act (*cap.* 132) was repealed by the Road Traffic Act, 1964 which came into operation in January 1965 and, in s.41(1), re-enacted s.43(1) in the same words but with higher penalties. The summons against the appellant was issued in February 1965 and he was convicted in May 1965.

On appeal, he contended that he had been wrongly convicted under the provisions of a statute which had been repealed at the date of the trial and that the magistrate had misdirected himself on the burden of proof and the finding was unreasonable or could not be supported having regard to the evidence.

Statutes construed:

Road Traffic Act (Laws of Sierra Leone, 1960, *cap.* 132), s.43(1):
"Any person who drives a motor vehicle on a road without due care and attention . . . shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or imprisonment . . . for a term not exceeding six months or to both such fine and imprisonment."

Courts (Appeals) Act, 1960 (No. 18 of 1960), s.7(6):
The relevant terms of this section are set out at page 268, lines 28–31.

Road Traffic Act, 1964 (No. 62 of 1964), s.23(1):
"Any court before which a person is convicted of any offence in connection with the driving of a motor vehicle—

(a) may . . . in addition to any other penalty imposed, order that such person be disqualified from holding or obtaining a driver's licence for a specified period; . . ."

Interpretation Act, 1965 (No. 7 of 1965), s.17(1):
The relevant terms of this section are set out at page 268, lines 10–18.

s.18: The relevant terms of this section are set out at page 268, lines 1–7.

Constitution of Sierra Leone, 1961 (No. 741, Second Schedule) s.19(7):
"No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."

Marcus-Jones for the appellant;
Chenery, Senior Crown Counsel, for the Crown.

DOBBS, J.:

The appellant was convicted on May 19th, 1965 in Magistrate's Court No. 6 in Freetown on a charge of driving on the highway at Campbell Street, Freetown on October 17th, 1964, motor car E 1450 without due care and attention, contrary to s.43(1) of the Road Traffic Act (*cap.* 132). He was not imprisoned or fined but he was disqualified from holding a driving licence for three years.

Against the whole of this decision he has appealed on the following grounds:

1. That the learned trial magistrate erred in law in trying and convicting the appellant under the provisions of a statute which had been repealed at the date of trial.

2. That the verdict and finding is unreasonable or cannot be supported having regard to the evidence.

3. That the learned trial magistrate misdirected himself on the onus of proof in a criminal charge.

4. That the sentence is excessive and unreasonable.

On the first ground, Dr. Marcus-Jones for the appellant argued as follows: The Road Traffic Act (*cap.* 132) was repealed by the Road Traffic Act, 1964, which came into force on January 21st, 1965. The summons herein was issued on February 19th, 1965. No provision was made in the repealing Act regarding offences committed before the Act came into operation. We have to look to the Interpretation Act, 1965, ss.17 and 18 and especially s.18 which provides:

"Where an Act is repealed or revoked and another Act substituted by way of amendment, revision or consolidation, unless a contrary intention appears—

. . . .

(c) all proceedings taken under the repealed or revoked Act shall be prosecuted and continued under and in conformity with the substituted Act as far as consistently may be."

The Act of 1964 is a consolidating Act.

Section 17(1) of the Interpretation Act provides:

"The repeal or revocation of an Act, unless a contrary intention appears, shall not—

. . . .

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Act had not been repealed or revoked."

Section 41(1) of the 1964 Act creates word for word the same offence as s.43(1) of *cap.* 132 but imposes heavier penalties.

I agree with Dr. Marcus-Jones that this offence should have been prosecuted under s.41(1) of the 1964 Act subject however to the defendant being liable only to the maximum penalties laid down by s.43(1) of *cap.* 132, the offence having been committed before the 1964 Act came into force. Section 19(7) of the Constitution refers.

However, if this were the only ground of appeal I should have felt it proper to have invoked s.7(6) of the Courts (Appeals) Act, 1960, which says: "In addition to the powers conferred by the above subsections the Supreme Court may in each case make any amendment or any consequential or incidental order that may appear just and proper," and would have amended the summons, as I cannot see how the appellant would have been prejudiced thereby.

I think the second and third grounds of appeal can be conveniently considered together. Except for the question of in what distance the appellant stopped after the collision there was absolutely no evidence on the part of the prosecution as to how the appellant was driving and I think that had the appellant made a submission of "no case" at the close of the prosecution's case he ought to have succeeded. The learned trial magistrate appears to base his decision on the defence evidence alone. With respect, I have the following observations to make:

1. The distance in which a vehicle is brought to a stop after a collision is not *ipso facto* evidence of high speed. It must first be shown that the vehicle was travelling at high speed; then the evidence that it failed to stop except after travelling a certain distance can be brought in to support the evidence of high speed and require an explanation. There can be other reasons for not stopping in the shortest possible distance; *e.g.*, to do so might cause danger to other road users.

2. With regard to the appellant's speed, the learned trial magistrate said: "I do not believe he was travelling at 10 to 15 miles per hour for if he was he ought in the circumstances to have been alert enough to avoid the collision." I find this an unjustifiable inference because it does not take into account the version of the appellant and his witness that the boy who was knocked over suddenly jumped in front of the car. Surely one needs evidence of how far away he was from the car at the time he jumped to be able to come to a decision whether or not the appellant was sufficiently alert to avoid the collision or was travelling at an excessive speed.

3. I can find no evidence to justify the learned trial magistrate in coming to his conclusion that the appellant tried to "bulldoze" his way through. There was no evidence that the crowd was completely blocking the road.

4. The learned trial magistrate refers to three points of impact shown on the plan exhibited. He makes no finding of fact as to which one was the actual one.

5. The learned trial magistrate has used certain expressions which appear to indicate that he was misdirecting himself on the onus of proof, which of course is that which applies in criminal cases. For example: "But if he becomes impatient and attempts to bulldoze his way through, *as I am inclined to think he did,* then he does so at his peril." Again: "If the defendant had been careful *this collision would most probably have been averted.* Instead even he himself admits that after the collision he travelled 5 ft. without stopping. I fail to see how this accords with his insistence that he was travelling between 10 to 15 miles per hour. In fact, *I rather believe* the prosecution when they say he travelled about 25 yards before stopping." I do not see how these remarks are consistent with the rule that the onus is on the prosecution to prove its case and to do so beyond reasonable doubt.

6. It seems that the learned trial magistrate was of the opinion that had the appellant been travelling at between 10 and 15 miles per hour

he would have been able to stop within less than 5 ft. I can see no justification for this view. According to the table of overall stopping distances shown in the English Highway Code, at a speed of 10 miles per hour the thinking distance is given as 10 ft. and the braking distance as 5 ft. making an overall stopping distance of 15 ft. I realise that the English Highway Code does not apply here but this table would apply anywhere so far as its figures are concerned.

I am fully conscious of the duty of an appellate court when it comes to considering a decision on facts. One should not lightly differ bearing in mind that the trial magistrate has had the advantage of hearing the witnesses and observing their demeanour. However, in this case I think the appellant has made out his second and third grounds of appeal and I shall allow the appeal.

With regard to the disqualification: In my view this was illegal. Section 23(1) of the Act of 1964 permits this "in addition to any other penalty imposed." There should therefore at least have been a nominal fine imposed before the order for disqualification could be made.

The appeal is therefore allowed. The conviction is quashed and the order for disqualification from holding or obtaining a driving licence is set aside.

Appeal allowed.

IN RE EDWINA JANET CLARKE (AN INFANT)

SUPREME COURT (Bankole Jones, C.J.): November 3rd, 1965
(Misc. App. No. 26/65)

[1] Evidence—burden of proof—standard of proof—illegitimate child of married woman—proof of illegitimacy required beyond reasonable doubt to rebut presumption of legitimacy: The child of a married woman is presumed to be the legitimate child of her and her husband until the contrary is proved beyond all reasonable doubt by the person alleging illegitimacy (page 273, lines 17–26).

[2] Evidence — presumptions—presumption of law—legitimacy—child of married woman presumed legitimate until contrary proved beyond reasonable doubt: See [1] above.

[3] Family Law—custody of children—illegitimate child—welfare of child paramount: No person has any absolute right to the custody of an illegitimate child since its interests and welfare are the first consideration of the court (page 276, lines 5–8).