

JERSEY / JUDGMENT

AG -v- Gregory [2008]

JRC 089 (04 June 2008)

[2008] JRC 089

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JUDGMENT

THE DEPUTY BAILIFF: 1. On 23 rd August 2007 the respondent was recorded by a Unipar SL700 handheld laser device operated by Centenier L'Amy as driving at 29 mph in a green lane, where the speed limit is 15 mph. At his subsequent trial on 29 th January 2008, the respondent said that he did not know that there was a 15 mph limit on that particular road and he did not have any idea at what speed he had been driving because he had been talking to his passenger. The Magistrate found that the laser device was working properly and that it had been correctly operated by Centenier L'Amy. Despite this, the Magistrate concluded that he must acquit the respondent of the offence of exceeding the speed limit. 2. The Attorney General says that, in reaching this somewhat surprising conclusion, the Magistrate erred in law and he now appeals by way of case stated. The Magistrate's decision 3. On 23 rd August 2007 Centenier L'Amy was carrying out a speed check in Rue de la Hague in the parish of St Peter. There is no dispute that there is a 15 mph speed limit on that road. The respondent approached Rue de la Hague along Rue de la Manoir and turned left so as to drive north along Rue de la Hague. Centenier L'Amy operated the laser device on the respondent's motor car as he drove along Rue de la Hague. The laser device recorded the respondent's car as travelling at a speed of 29 mph. He was stopped and was subsequently charged with exceeding the speed limit. 4. The matter came before the Magistrate on 29 th January 2008. Evidence was given about the distance from where Centenier L'Amy was standing with his laser device to where he could first have seen the respondent's car from that position. Centenier L'Amy considered that the distance was 178 metres whereas the respondent considered it to be 153 metres. The Magistrate found that he could not be sure of the higher figure and accordingly took the lower figure of 153 metres. Assuming the respondent's car was travelling at 29 mph and allowing .288 seconds for the operation of the laser device, the Magistrate then calculated (the calculations as such are not disputed by the Attorney General) that this left 1.974 seconds for Centenier L'Amy, having first seen the respondent's car, to form an opinion of excessive speed, raise the speed gun, sight it on the front number plate and press the activating button. He concluded that this was too short a time and accordingly he could not be sure that Centenier L'Amy had formed his opinion that the respondent was exceeding the speed limit before he decided to activate the laser device. 5. Why is this significant? The answer is that the Magistrate was persuaded by Mr Gregory that, by reason of Article 21(5) of the Road Traffic

(Jersey) Law 1956 ("the 1956 Law"), a person cannot be convicted of speeding unless the police officer operating the speed detection device independently forms an opinion that the driver is speeding prior to activating the device. What led him to this conclusion? 6. Article 21(5) provides as follows:- "A person prosecuted for driving a motor vehicle of any class or description on a road at a speed exceeding the speed limit imposed by or under this Article or any Order made under this Article in relation to a vehicle of that class or description shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was driving the vehicle at a speed exceeding that limit." 7. Ever since the introduction of speed limits, there has been an equivalent provision in the relevant English legislation. The present provision is contained in Section 89(2) of the Road Traffic Regulation Act 1984 which reads:- "A person prosecuted for such an offence shall not be liable to be convicted solely on the evidence of one witness to the effect that, in the opinion of the witness, the person prosecuted was driving the vehicle at a speed exceeding a specified limit." 8. The Magistrate considered that, because of the similarities in the legislation, case law and legal commentaries in the UK were of persuasive value in determining the meaning of the Jersey statute. He referred to Wilkinson's Road Traffic Offences (23 rd Edition) at paras 6.75 - 6.80, Road Traffic Law and Practice (3 rd Edition) A11-04 - A11-06 and the ACPO (Association of Chief Police Officers) Code of Practice for Operational Use of Road Policing Enforcement Technology at the fourth paragraph of Section 5 on page 31. 9. Having done so the Magistrate expressed his conclusion in the following paragraphs of his judgment:- "11 Furthermore, I have looked as far as possible at the authorities mentioned in the extracts from the text books and have found that in all cases the UK courts have assumed that it was necessary for the opinion of excessive speed to be formed prior to the use of a speed measuring device so that the latter corroborated the already formed opinion. One can see that this human opinion of speed will serve as a check on the correct operation of the machine. That, of course, is UK law. If one looks at the wording of the Jersey and UK statutes they do not expressly require corroboration. All that they say is that a person cannot be convicted upon the opinion evidence of one person as to speed. They do not say that a person cannot be convicted alone upon the basis of the reading of a speed gun . That was the submission by Advocate Hollywood for the prosecution. However, as the wording is so similar, I am going to follow the UK case law and hold that it is necessary in Jersey for there to be evidence of the opinion of a person as to excessive speed which is then corroborated by the evidence of the reading on the speed gun." [emphasis added] 10. Having reviewed the evidence and concluded that he could not be sure that Centenier L'Amey had formed the necessary opinion of excessive speed before deciding to activate the laser gun, he concluded that he must acquit Mr Gregory. He went on to say that he was satisfied from the evidence that the machine was working properly on the relevant day and that there was nothing unfair about any of the evidence which had been adduced. He said at para 19 of his judgment:- "19 It follows that barring the issue of the lack of formation of the opinion of excessive speed prior to activation of the speed gun I would have convicted Mr Gregory." 11. As can be seen therefore, the acquittal resulted purely from the Magistrate's conclusion that, as a matter of law, a person cannot be convicted for speeding on the basis of evidence from a speed recording device such as a laser gun unless the police officer operating the device has independently formed an opinion that the motorist is speeding prior to

deciding to activate the device. The question on this appeal is whether the Magistrate was correct in that conclusion. Discussion 12. We propose to approach the matter first as one of simple statutory interpretation. In our judgment the wording of Article 21(5) is clear. It is intended to ensure that a motorist cannot be convicted on the evidence of any one person (usually a police officer) that, in his opinion, the motorist was driving at a speed in excess of the speed limit. Such evidence is clearly inherently unreliable and the legislature, being alert to this, did not wish a person to be convicted on impression evidence of this nature from a sole witness. 13. But evidence of the result from a speed device such as a laser gun is not evidence of opinion. The reading from the speed device is factual evidence and the police officer simply gives factual evidence as to what speed the device has recorded. Let us suppose that a police officer forms no opinion of the speed of a particular car but simply activates the speed device which records the car's speed. Is a conviction on the basis of the result from the speed device one which is based on evidence that, in the opinion of a witness, the person was driving at a speed exceeding the limit? The answer must be no. There is no question of any opinion. There is simply evidence of fact that the device has recorded the vehicle as having been driven at a speed in excess of the limit. The sole question for the Court is whether it is satisfied to the criminal standard that the device was working properly and was operated correctly by the police officer, so that it has accurately recorded the vehicle's speed. 14. Indeed, the Magistrate himself accepted in the emphasised passage in paragraph 12 of his judgment (para 9 above) that the wording of the statute does not say that a person cannot be convicted solely upon the basis of the reading of a speed gun. However, he felt driven to conclude that he must depart from the natural meaning of the statute because of some principle of law which he extracted from the cases in the United Kingdom. We must consider next, therefore, whether he was right to find that such a principle existed. 15. It is not entirely clear which specific cases the Magistrate was referring to at paragraph 11 of his judgment, but we have had an opportunity of considering all of those mentioned in the texts to which the Magistrate referred. It is true that, in those cases, the evidence from the speed device is discussed in terms of corroboration of the opinion evidence of the police officer. However, that is because, in those cases, the police officer gave evidence to the effect that he had formed an opinion as to the defendant's speed and that this opinion was confirmed either by evidence of his speedometer as he followed the car or by the recording of a radar gun or similar device. In none of the cases was the point before us argued because it was unnecessary to do so by reason of the police officer having formed the requisite opinion. 16. So, for example, in *Nicholas v Penny*

[1950] 2KB 466, the Divisional Court held that the opinion evidence of a police officer that the defendant was exceeding the speed limit could be corroborated by that same police officer's evidence as to the reading on the speedometer of his police car as he followed the defendant, even though there was no evidence that the accuracy of his speedometer had been checked. That principle has been applied equally to devices such as radar guns etc in cases such as *Collinson v Mabbott* [The Times Law Reports 10 th October 1984] and *Darby v DPP*

[1995] RTR 294. 17. We would refer specifically to two of the cases. In *Crossland v DPP*

- [1998] RTR 417 there was an un-witnessed collision where the defendant drove her car into a pedestrian. She was charged with speeding and the only evidence against her was that of a police officer, an expert on post-accident reconstruction, who had visited the scene after the accident and had examined the skid marks, the damage to the car and other matters, from which he concluded that the car had been travelling at not less than 41 mph at the start of the skid marks. The applicable speed limit was 30 mph. The defendant appealed against her conviction by the Magistrates on the ground that the conviction was in breach of section 89(2) of the Road Traffic Regulation Act 1984 because it was based entirely on the opinion of one witness, the police officer, as to the speed at which the defendant's vehicle had been driven. 18. The Court held that the conviction was not based solely on the opinion as to the defendant's speed because the opinion of the police officer was formed by reference to objectively determined phenomena (e.g. the length of the skid marks). In passing, the Court made some pertinent observations about the evil against which section 89(2) (and therefore Article 21(5) of our legislation) was intended to guard. Thus Bingham LJ said at 423:- "Those being the facts, I return to section 89(2), the terms of which I recited at the outset. It is plain, and indeed common ground between the parties, that the subsection is intended to prevent the conviction of defendant on the evidence given by a single witness of his unsupported visual impression of a defendant's speed . That is so whether the witness is an untutored bystander or a police officer who may have considerable expertise in visually assessing the speed of moving vehicles. This parliamentary intention goes back at least to 1903 when Section 9 of the Motor Car Act 1903 of that year was enacted and provided: "..... but a person shall not be convicted under this provision for exceeding the limit of speed of [20 mph] merely on the opinion of one witness as to the rate of speed" Thus, construing that section, Lord Alverstone CJ in *Plancq v Marks*
- (1906) 70 JP 216 said at p216: "The words of section 9 of the Motor Car Act 1903 were inserted for the purpose of preventing a person from being convicted under the section on the mere opinion of one person as to the rate of speed. The test in such cases is whether the evidence of the witness is matter of opinion or matter of fact."" (emphasis added) Bingham LJ went on to say on the same page:- "We were referred to a number of cases which reveal a high degree of consistency over the years. A defendant is not regarded as being convicted on the opinion evidence of a single witness if there is evidence of the time taken by his car, timed by a stopwatch, to travel over a certain distance *Plancq v Marks*
- (1906) 70 JP 216; or of the speedometer reading on a following vehicle - *Weatherhogg v Johns*
- (1931) 95 JP JO 364; *Nicholas v Penny* [1950] 2 KB 466; *Swain v Gillett*
- [1974] RTR 446; or a reading calculated from signals fed into a computer by an electronic tripwire device *Kent v Stamps*

[1982] RTR 273. The same, it would seem, is true where readings are obtained from radar speed meters, radar guns and Vascar; see Wilkinson's Road Traffic Offences 13 th Edition (1987) Vol 1362

- 365. In all these cases the accuracy and reliability of the readings will of course be open to challenge but the authorities in my view make it plain that evidence of this kind is not evidence of opinion ." (emphasis added) Finally Bingham LJ went on to say at 424:- "The phenomena were, at the time of collision verifiable by the defendant. She, or her advisers, were in principle as well able as the prosecutor to draw relevant scientific inferences from them and to challenge the prosecutor's calculations. She was not in jeopardy on the strength only of the unsupported visual impression of a single witness and this is the risk against which the sub-section is in my judgment intended to give protection ." (emphasis added) 19. Hutchison J agreed and said the following at 425:- "Section 89(2), as it seems to me, and as the cases show, is aimed at preventing convictions for speeding on the basis of the mere opinion of one witness. It does not require that the evidence of a witness in a speeding case must always be corroborated, nor does it preclude a conviction where the evidence of a single witness includes, as a part of his observations and conclusions, an expression of opinion. In short, in my view, Mr Carter-Manning is correct when he submits that the sub-section is directed at preventing convictions on the basis of what he called 'mere impression evidence '" (emphasis added) 20. In Kent v Stamps [1982] RTR 273 the police officers were using Truvelo radar equipment which consists of two cables being stretched across the road. As a vehicle is driven across one and then the other cable, a computer calculates the vehicle's speed by reference to the time taken to cross the two cables. Its accuracy clearly depends on the cables being laid the correct distance apart. In this particular case the equipment recorded the defendant's lorry as doing 40 mph. The defendant gave evidence that, on this particular road which was a hill, his lorry could not do 40 mph. He said that his speedometer recorded him as doing 20 mph. The Magistrates specifically applied their local knowledge of the location and gave the defendant the benefit of the doubt by accepting that his lorry could not do 40 mph on that location. The prosecutor subsequently appealed on the basis that the acquittal was perverse. 21. The Divisional Court, not without hesitation, dismissed the appeal on the grounds that it was just open to the Magistrates to reach a not guilty verdict on the evidence. Ormrod LJ at 277, said this:- "It seems to me that [the Justices] were using their knowledge of the locality to do just that, to assess and weigh up the rival evidence, the rival evidence being the police officers' opinion supported by the Truvelo meter - because of course the evidence in fact is the Truvelo meter reading - as against the defendant's statement that his vehicle in that particular case could not have been doing 40 mph as stated." The judge went on to say this:- "The basic principle must be that the reading on the machine is evidence. It is very cogent evidence indeed, and in the vast majority of cases one would suppose that it was conclusive evidence. But we have not reached the stage when the reading on such a piece of apparatus as this has to be accepted as absolutely accurate and true, no matter what. There are all kinds of things in a case like this which might have gone wrong. The Justices do not actually state in their case as a finding of fact

that the machine was accurate and accurately used." Later he went on to say:- "The reading on the machine is, as I have said before, strong and should in most cases be conclusive evidence of the fact that the vehicle was travelling at a speed in excess of the limit. The Justices would be, and should be, extremely reluctant to reject that finding, although there must be situations in which they are entitled to doubt it. They will be very few and far between and the Justices must be very careful not to allow somebody to run away with their judgment on these matters....." 22. In our judgment, whilst, as already noted, these cases talk in terms of the evidence of the relevant equipment corroborating or supporting the police officer's evidence, none of them addresses the issue with which we are faced and none of them states that a court cannot convict on the sole evidence of the equipment. Indeed, the judgment of Bingham LJ in *Crossland* is clear that evidence obtained by such equipment is not evidence of opinion, it is evidence of fact. Article 21(5) (and the equivalent English legislation) cannot therefore be of any relevance because those provisions only prevent conviction upon the opinion of a single witness. 23. The respondent and the Magistrate both placed considerable reliance upon the APCO Code of Practice for Operational Use of Road Policing Enforcement Technology ("the APCO code") issued in 2004. The APCO code states it should take precedence over the standards laid down by the manufacturers of the relevant equipment. At page 31 of the code there is a section head 'Attended Actively Operated Devices Presentation of Evidence'. The fourth and fifth paragraphs of that section read as follows:- "The evidence from attended actively operated equipment corroborates the operator's prior opinion the target vehicle was travelling in excess of the permitted speed limit for the road or class of vehicle. If the operator has any doubt as to the validity of the reading obtained by the device in comparison to their personal estimation of the speed of the target vehicle, then they will stop the check." (original emphasis) There is a similar provision in the fourth paragraph at page 66 in the section dealing with laser devices. 24. The APCO code is clearly intended to provide sensible and practical advice to police officers. We do not know the reason why the code states that the equipment corroborates the prior opinion of the police officer but we can imagine that it might have been felt that vehicles should normally only be checked for their speed once a police officer has formed a belief that they are speeding from his visual impression. Furthermore, as the fifth paragraph states, the fact that a police officer has already formed a visual impression of speed may help in detecting if the equipment is malfunctioning. 25. But, whatever the reason and however sensible the advice, the APCO code cannot alter the law, which is to be found in the relevant statute. In our judgment, it is impossible to read into Article 21(5) (or the equivalent English provision) a legal requirement that, before a court can rely upon the factual evidence of speeding derived from equipment such as a laser or radar device, a police officer must independently have formed an opinion, relying upon his visual impression of the vehicle, that it is exceeding the speed limit. Article 21(5) says nothing of the sort. Our view is entirely consistent with the decision of the Divisional Court in *Crossland v DPP* which confirmed that evidence from speeding devices is not evidence of opinion and that the risk against which the English provision equivalent to Article 21(5) was aimed is that of a person being convicted on the strength only of the unsupported visual

impression of a single police officer. That, of course, is not the position where the evidence relied upon is derived from speed detection equipment which has been found to be working properly and to have been correctly operated. 26. The respondent argued that the dictionary definition of 'witness' was wide enough to encompass evidence obtained from speed detection equipment. But, even if that were to be accepted, the fact remains that such evidence is not evidence of opinion; therefore it is not caught by Article 21(5). 27. He further argued that the verb 'corroborate' is defined in the dictionary as 'give evidence which strengthens evidence already given' (Chambers); 'to confirm or support (facts, opinions etc) by providing fresh evidence' (Collins); and 'give support to (a statement, its maker, theory, belief, produce or afford confirmation of' (Oxford). He argued that each of these definitions illustrates that corroboration of something can only take place once it has happened. It follows, he submits, that corroboration of the opinion of a police officer can only occur after that opinion has been formed. 28. We do not accept that corroboration is limited in this way. The classic case permitted by Article 21(5) is where two police officers, without the benefit of any equipment, both give evidence based upon their visual impression to the effect that a vehicle is exceeding the speed limit. In most cases they are likely to have formed that opinion at the same time as each other as the vehicle passes them; yet clearly the evidence of one can corroborate the evidence of the other. Corroboration merely means to support and there is no rule that there must be any difference in timing between the evidence being corroborated and the evidence providing the corroboration. 29. Indeed, the view of the Magistrate that the opinion of the police officer must be formed before being corroborated by any equipment is inconsistent with the decision in *Crossland v DPP*. In that case the officer's opinion was supported by the factual evidence concerning the skid marks etc. It was only after he had viewed this independent factual evidence that he formed the opinion that the defendant had been speeding. The opinion therefore followed the other evidence. 30. In any event, as Hutchison J stated in *Crossland*, the relevant English provision (and therefore Article 21(5)) does not require that the evidence of a witness in a speeding case must be corroborated. It merely provides that a person may not be convicted on the mere impression evidence of a single witness as to the speed of a vehicle. 31. In summary, we conclude that there is nothing in the English cases which should lead the Court to give Article 21(5) anything other than its natural interpretation, which is that it is intended to prevent the conviction of a defendant on the opinion evidence given by a single witness of his unsupported visual impression of a defendant's speed. Where the evidence consists of a read out from speed detection equipment such as a radar or laser device there is no question of any opinion evidence. The evidence produced by the machine is factual evidence and it is open to the Court to convict on that evidence alone. There is no need for a police officer also to give evidence that his independent visual impression was that the vehicle was speeding. 32. Naturally, it is often helpful to the Court to have such evidence and in its absence, the Court will no doubt require to be satisfied that the equipment was working properly and was correctly operated by the police officer. But that is a matter entirely of weight. It follows that the Magistrate erred in law in concluding that a police officer has to form an opinion of speed at all, let alone that such opinion has to be formed prior to operation of the speed

detection equipment. 33. Given the Magistrate's finding that he would have convicted in the absence of his conclusion that the law required the officer to form an opinion of excessive speed prior to activation of the speed gun, the only correct verdict on the evidence was one of guilty. We therefore allow the appeal and record a verdict of guilty against the respondent. 34. Following his decision to acquit the respondent, the Magistrate went on to say that, had he found the respondent guilty, he would have imposed an absolute discharge. He said this on the basis of his decision in another case to the effect that the signage near the junction of Rue de la Manoir and Rue de la Hague, indicating the existence of a 15 mph speed limit on Rue de la Hague, did not comply with the requirements of Article 72 of the 1956 Law because the signage was not placed 'at or near' Rue de la Hague. 35. In the recent case of *Burnett v AG*

[2008] JRC 054 this Court overruled the decision of the Magistrate on that aspect and held that the signs in question did comply with the requirements of Article 72. It follows that, on conviction, the respondent falls to be sentenced without regard to any suggestion that the signs were inadequate. In the circumstances we remit the case to the Magistrate's Court for sentencing in the ordinary way. Authorities Road Traffic (Jersey) Law 1956. Road Traffic Regulation Act 1984. Wilkinson's Road Traffic Offences (23 rd Edition). Road Traffic Law and Practice (3 rd Edition). ACPO (Association of Chief Police Officers) Code of Practice for Operational Use of Road Policing Enforcement Technology. *Nicholas v Penny* [1950] 2KB 466. *Collinson v Mabbott* [The Times Law Reports 10 th October 1984]. *Darby v DPP* [1995] RTR 294. *Crossland v DPP* [1998] RTR 417. *Kent v Stamps* [1982] RTR 273. *Burnett v AG*

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