



IN THE CROWN COURT AT LUTON

7 George Street

Luton LU1 2AA

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Before:

HIS HONOUR JUDGE SIMON
THE HONORARY RECORDER OF LUTON

Between:

REX
- and -
JOHN DAVIES

Prosecution

Defendant

Mr N Moore for the **Prosecution**
Mr R Dawson for the **Defendant**

RULING ON SUBMISSION OF NO CASE TO ANSWER

Introduction

1. To describe this case as tragic really does not do it justice. Coexisting with its tragedy, there are features of its factual matrix which make it quite singular amongst cases of its type.
2. One must not lose sight of the fact that the case involves the sudden death of Mrs Penelope Bullpitt on 23 September 23, following an incident at work the previous day.

Her passing will have come, without any doubt, as a terrible shock to her family, friends and colleagues. The Court extends its sincere condolences to all those touched by Mrs Bullpitt's death for their irreparable loss.

3. Members of Mrs Bullpitt's close family have attended the trial and conducted themselves in an entirely dignified manner, respectful of the Court's process. Nothing that the Court says or does will ameliorate their pain in having to relive the distressing events. It is equally important to emphasise that the outcome of these proceedings is no reflection whatsoever of the incalculable value of the life lost.
4. It is however very important, at the outset of this ruling, to remind all those involved and observing that causation of Mrs Bullpitt's death is strictly not in issue. What is in issue, and what is the sole focus of the trial in this Court, is whether John Davies, the Defendant, is to be held criminally liable for Mrs Bullpitt's death.
5. At the start of the trial, following a voir dire, I ruled on the contested issue of whether or not there was sufficient evidence for the jury to conclude that the place at which the collision took place was a 'road or other public place'. Having ruled that there was, the trial began.
6. Following the close of the prosecution case on the afternoon of Day 3 of the trial, Mr Dawson indicated that there was to be a submission of no case to answer (SNCA). I invited counsel to provide something brief, by way of bullet points or a speaking note, so that the broad issues were clearer before embarking on oral submissions on the morning of Day 4. I am grateful to counsel for their care in focussing on the heart of the issue which I will describe simply at this stage as the 'sufficiency of evidence' argument relating to the standard of driving. The legal point on which I ruled at the outset of the trial is not being revisited in this SNCA.

Factual background

7. The Defendant, Mr Davies, is charged on an indictment containing a single count of causing death by careless driving. On Friday 22 September 2023, both he and the deceased, Mrs Bullpitt, were at work. They were both employed at the Center Parcs site in Woburn Forest (Center Parcs). Center Parcs is a leisure park that offers a variety of mainly residential holidays for families or groups including onsite sports and recreational, with some other categories of day and/or short stay visitors using the Spa or conference facilities.
8. Mrs Bullpitt was a housekeeping team leader. Mr Davies was a maintenance operator. As part of her employment on 22 September 23, Mrs Bullpitt was using a bicycle to get around the complex. Attached to the bicycle was what is described in the opening note as a 'trailer' but has the appearance of the type of covered-in child-seat that might be attached to the rear of a bicycle. It was plainly intended to convey towels, linens and other items as required for Mrs Bullpitt's role on this particular day.
9. As part of his employment, Mr Davies would drive a converted golf buggy. This had had added to its rear a large metal cabinet, for the storage of items such as tools needed for his job. The one that he was driving on 22 September 23 had a speed limiter fitted and therefore had a maximum speed of ten miles per hour, which was in fact the speed limit throughout Center Parcs. The golf buggy is left-hand drive.
10. Friday is one of two 'changeover' days per week at Centre Parcs, the other being Monday. A 'changeover' day is one on which a significant proportion of guests using the holiday lodges leave having completed their stay and the site is readied for the arrival of the next tranche of guests. Shortly after midday on the day in question, Mrs Bullpitt left the main service area close to the Pine section of Center Parcs on the bicycle with trailer. She travelled around the barrier that delineates the staff-only area and made her way to a point outside Lodge 117, which is at the northernmost end of a thoroughfare that runs from north to south and is signposted as a route back to the

Car Park and the exit. The thoroughfares in Center Parcs are not named or otherwise individually identified. As a result, I shall refer to this as 'Route NS'.

11. Approximately 30 seconds behind Mrs Bullpitt, Mr Davies can be seen to exit the main service area, driving the golf cart. There is nothing to suggest that he was aware that Mrs Bullpitt had preceded him. He too circumnavigates the barrier and then comes back onto the throughfare that leads away from the service area. This runs from east to west and I will refer to it as Route EW for ease of identification.
12. To the left of Route EW, immediately on leaving the service area, there is woodland with copious trees, in keeping with the forest theme that permeates the site. A short distance along Route EW on its left-hand side it meets Route NS at a right angle, albeit there appears to be a curve to the junction entrance.
13. As Mr Davies proceeded along Route EW, a large Biffa waste disposal truck driven by Mr Douel was travelling in the opposite direction (west to east) along Route EW. Mr Douel's evidence was that there was some level of communication between himself and Mr Davies as they were aware of each other's presence on the thoroughfare and the footage seems to show Mr Davies slowing before returning to his previous speed (9mph or thereabouts) as he turned into Route NS. Within approximately two seconds his buggy made contact with the rear of Mrs Bullpitt's trailer, causing her fatal fall.
14. Center Parcs staff summoned an ambulance but did not contact the police believing that as the collision occurred on private property, it was not necessary to do so. It was only on the recommendation of the paramedics that the police were informed. By the time the police arrived not only had Center Parcs staff removed the two vehicles from the scene, but they may well have done some clearing up as well. In addition, there had been a short, heavy rainstorm (Agreed Fact 23) upon arrival of the

police which is likely to have had some impact on the availability of evidence for the collision investigation team.

15. Some six months later, on 7 March 24, PC Knight, having taken over the investigation in February 24, visited the location to conduct tests and a reconstruction (Agreed Fact 26). The Agreed Fact states, “During the visit, video footage was taken, in an attempt to show the perspective of the driver of the [golf buggy] ... a bicycle, similar to the one involved in the collision, was placed as close to the point of impact as was possible”. The latter point covers the fact of the vehicles precise locations being unknown due to their being moved, however, it is unlikely that much turns on this for present purposes.

Trial evidence

16. I begin this section with the caveat that it is not intended to be an exhaustive recount of the prosecution case but rather highlighting the more significant aspects that contextualise my consideration of the SNCA. The prosecution evidence consists of:

16.1 Oral evidence from Andrew Douel, the sole independent eyewitness – it is worthy of note that as a result of some of the evidence given by Mr Douel, which was either demonstrably or inferentially unreliable (although the genuineness of his belief in its reliability was not in question), Mr Moore signalled an intention to invite the jury to ask themselves whether they could really place any reliance on his evidence (despite his being a prosecution witness). Mr Moore did refer to the fact that it was open to the jury to accept some of Mr Douel’s evidence and reject other parts of it, but the relevant evidence for this application, relating to how the collision occurred, either falls squarely into that which the prosecution consider unreliable or else is too tenuous to be of value. The one exception might be Mr Davies’

comment in the immediate aftermath that he had not seen Mrs Bullpitt, although the exact interpretation of this in the immediate moments after and most likely in a state of some shock, were not pressed on the Court by the prosecution to the same extent as other evidence.

- 16.2 Oral evidence from Rabinder Singh Dehal, Chief Corporate Officer of the Center Parcs parent company – Mr Singh Dehal’s evidence related solely to the issue of whether the location of the collision was subject to the Road Traffic Act 1988, my having ruled as a preliminary issue that there was sufficient evidence to leave this point to the jury.
- 16.3 Oral evidence from PC Warren Knight, the prosecution’s Forensic Collision Expert – it transpired that PC Knight had not been the original Collision Expert but had inherited the investigation from his predecessor, Acting PS Colley (although this was not reflected accurately in Agreed Fact 15). PC Knight’s evidence was in part an adoption of APS Colley’s work, in part his own work (which included what was termed a ‘reconstruction’) and, in part, the outcome of his discussions with the Defence Forensic Collision Expert, Dr Ellwood. Those inter-expert discussions produced a joint expert document. Although the document itself is not before the jury, some of its joint conclusions are through PC Knight’s oral evidence. I set out PC Knight’s evidence in more detail below and address the ‘reconstruction’.
- 16.4 A compilation of CCTV footage, together with some additional longer clips of some of those that contributed to the compilation. It should be noted in passing that some parts of the compilation, especially footage from the Biffa lorry of key elements of the collision, are heavily pixilated and indistinct as to the finer details of what they are said to depict.

- 16.5 A jury bundle containing maps and pictures, including of the examinations of the two vehicles involved. Neither vehicle was caused any discernible damage during the collision. Senior staff on duty had taken the view that as the collision took place on private land the police did not need to be informed. Both vehicles had been removed from the scene by Center Parcs staff before the police arrived. The scene of the collision had therefore both been interfered with, however unintentionally, and saw a heavy burst of rain as the police were arriving.
- 16.6 A detailed, typed, prepared statement provided by Mr Davies, through his solicitor, at his police interview in November 23. The prosecution set some store by this document as supportive of their case; and
- 16.7 A composite set of Agreed Facts.

PC Knight's evidence

17. Given the observations above about the oral evidence before the jury, it is important to include some of PC Knight's evidence. The following is intended to be illustrative and not exhaustive. In evidence in chief, PC Knight:
- 17.1 Stated that he calculated the golf buggy's speed at 8mph and he continued his evidence in this vein despite adopting 9mph (or thereabouts) in the joint expert statement, which he only acknowledged in cross-examination.
- 17.2 Having speculated that the glass on the ground came from Mrs Bullpitt likely holding it, accepted the Court's clarificatory suggestion that the glass was of no evidential value in light of his evidence that the scene seemed to have been at least partially cleaned up before the arrival of the police.
- 17.3 Could not say if the locked tyre marks on the tarmac were created prior to or during the collision as the relative positions of the vehicles could not be pinpointed (PC Knight observed that he could not even say if the vehicles' positions shown in pictures taken whilst Mrs Bullpitt was being treated by

paramedics, were accurate as they may already have been moved prior to being removed altogether).

- 17.4 Stated that there was no impairment of Mr Davies through drinks, drugs, medication or mobile phone or other distraction.
- 17.5 The buggy did not have an anti-lock braking system.
- 17.6 The fact of braking means that Mr Davies became aware, consciously or subconsciously, of Mrs Bullpitt but did not react in time.
- 17.7 Could not say whether braking was before or after the collision, but it was too late.
- 17.8 Described perception response time (PRT) based on 8mph and calculated it together with time to stop based on this speed, the upper bracket of which was 2.2 seconds (the bracket being 0.75-1.5 seconds).

18. In cross-examination, PC Knight gave evidence and/or agreed with the proposition:

- 18.1 That the total time involved in braking was actually PRT plus the act of braking plus the effect of braking.
- 18.2 Latency (between depressing the brake and braking actually being effected) would take some time, not disagreeing with a suggested 0.2-0.3 seconds.
- 18.3 That it was important not to confuse the onset of PRT with when the hazard was first visible and there was no way of measuring when Mr Davies first saw the hazard.
- 18.4 That his calculations were based on when the hazard was available to be seen not when it was seen.
- 18.5 That a careful and competent driver might have a PRT of up to two seconds, the earlier figures (0.75-1.5 seconds) being a range of average response times.
- 18.6 Mr Davies needed to take into account what else was along the road, including the Biffa lorry which posed a hazard to him and vice versa.
- 18.7 This and other factors, including age, may have affected PRT without falling below the standard of a careful and competent driver.

- 18.8 The hindsight now available would not have assisted a careful and competent driver at the time and one should not fall into the trap of thinking events were more predictable than they actually were (what was also termed hindsight bias erroneously influencing the case).
- 18.9 The golf buggy could not be tested for deceleration speed due its low speed, so he had adopted 0.7g, which is the standard accepted for motor vehicles, but that he had subsequently agreed a figure of 0.4g with Dr Ellwood in the joint expert statement, a figure he described as more realistic (moments later PC Knight said that “it was fair to say [the deceleration rate] was somewhere between 0.4g and 0.7g, but that 0.4g was reasonable”.
- 18.10 A recalculation of PRT (at 1.5 seconds) plus braking with the lower deceleration figure would mean that a collision was inevitable even at 8mph.
- 18.11 Clearly some careful and competent drivers whose PRT was slightly higher at 2 seconds would have experienced the same inevitable collision.
- 18.12 The brake light illumination was not a reliable indicator as testing of similar vehicles had shown significant divergence and it was a reasonable possibility that Mr Davies was in the process of braking when it was interrupted by the impact, but the science demonstrated that he had seen and perceived Mrs Bullpitt and begun the process of braking.
- 18.13 Various factors about the extent to which Mr Davies’ perception of Mrs Bullpitt might have been affected (eg the sun, Mrs Bullpitt blending into the background etc) were accepted as reasonably possible contributors to delayed PRT in this case.
- 18.14 It was a reasonable possibility that Mr Davies saw Mrs Bullpitt but did not register that she was stationary until a collision was unavoidable.
- 18.15 Accepted that he was a specifically trained advanced driver and that his training was different to that of members of the public (which influenced some of his answers).

18.16 Could not say if Mr Davies had time to glance to his left when he was engaged with the Biffa lorry and the potential hazard.

18.17 That “We really just do not know how inevitable the collision was.

18.18 That “Everything may have been done perfectly properly but still played out as it did”.

18.19 That in answer to the question whether Mr Davies’ actions were consistent with a careful and competent driver, “We do not know, it depends on where in the ranges it was/he is”.

19. In re-examination PC Knight gave evidence or agreed with the proposition:

19.1 It was possible to wave to Mr Douel but look in the direction of travel.

19.2 As to factors such as the sun affecting conspicuity, maybe a careful and competent driver would slow down if their view ahead was obscured.

20. In answer to clarificatory questions from the Court, PC Knight gave evidence:

20.1 That he had read the report of Dr Ellwood and had discussed his testing of similar vehicles and PC Knight would agree a deceleration figure from those tests of 0.4g, as set out in the joint expert agreement.

20.2 Whilst he would expect a careful and competent driver to have seen Mrs Bullpitt, he could not say that all careful and competent drivers would have done.

The Defence submissions

21. The thrust of the submissions on behalf of Mr Davies was that the “concessions” made by PC Knight in respect of the calculation of PRT, allowing for various factors put to him and accepted as reasonable, were such that no jury could be sure that Mr Davies’ driving fell below the standard of a careful and competent driver.

The Crown's submissions

22. Mr Moore responded to the defence submissions by pointing out that the case does not turn on PC Knight's evidence alone, because there is the important prepared statement from Mr Davies provided at interview. Mr Moore advanced an argument that involved the interpretation of certain words or phrases in the prepared statement, coupled with PC Knight's evidence. He also submitted that the calculation of PRT was not the test for the jury to apply, but rather the standard of the careful and competent driver.

Discussion

23. I have carefully reviewed all the evidence that is in fact before the jury, putting out of the equation any additional evidence that I may have read that has not been adduced thus far.

24. It is important to note that there is no issue in this case about the credibility of witnesses that touches on the allegation against any defendant. The court at this stage is not engaged in any assessment of that type, which would almost always be a matter for the jury. This is a case where it is not about a jury accepting one witness' evidence over another, but of a jury seeking to set a standard by which to judge Mr Davies' acts or omissions. Allegations of careless driving frequently generate real challenge for juries because of the often very fine line between what is an acceptable standard of driving and what falls just below it – usually an objective test created by the accumulation of jurors' individual, subjective experience, supplemented by evidence, including expert evidence.

25. The seriousness of the allegation in this case, together with the consequences for Mrs Bullpitt and her family, cannot be underestimated, but it is important for the court not to allow such factors improperly to influence a sound and careful analysis of the state of the evidence. The same basic legal test applies, whether a case involves the most serious or the least serious alleged offences.

26. Although in writing, Mr Dawson advanced both limbs of the Galbraith test, I have concentrated my consideration on the second limb, as that is where the nub of his oral submission lay.

27. The court's task is to assess the evidence, taking the Crown's case (not the Crown's case theory) at its highest – without cherry-picking – and to decide whether a reasonable jury properly directed, and conducting itself faithfully to those directions, could convict of the offence on the indictment.

28. It is a beneficial exercise for the Court to remind itself of some of the key directions that would be given to the jury. They include:

28.1 The burden and standard of proof and their application to each element of the alleged offence.

28.2 That the jury must not guess or speculate about matters that have not been covered in the evidence; and

28.3 The direction on expert evidence, which in this case would refer to forensic collision investigation and the standard expected of a careful and competent driver as both being matters on which the Court was receiving expert evidence. Whilst reminding the jury that the expert evidence is only part of the evidence in the case, for the reasons set out below, I have concluded that the jury would be especially reliant on expert evidence in this case.

The reconstruction & PC Knight's evidence

29. The reconstruction element of PC Knight's evidence featured at an early stage of his evidence in chief and was returned to just before his examination-in-chief concluded. In considering this aspect of the evidence I put to one side the basic differences inherent in the reconstruction, such as the need to use vehicles similar to those involved, but not the actual vehicles, as well as environmental factors such as the

time of year, the weather and the like. Nevertheless, and quite contrary to the terms of the relevant Agreed Fact (paragraph 26), the reconstruction made no effort to control the stated, key element, being the view available to Mr Davies, his POV as it would be called in common parlance. This was by dint of the simple fact that instead of placing the camera recording the event at something close to the level of Mr Davies' sightline, PC Knight chose to place the camera on a hat on top of his own head. The obvious differential in height between Mr Davies and PC Knight, let alone between Mr Davies and a person with a sightline level with the top of PC Knight's head, has rendered a quite distorted view of what might or might not be seen, however unintentionally.

30. Why does this matter? It matters because one of two refrains adopted by the prosecution in this case is "[Mrs Bullpitt] was there to be seen". PC Knight accepted in answer to questions from the Court that from Mr Davies' POV, Mrs Bullpitt may have been obscured by the onside (driver's side, as it is left-hand drive) wing mirror once past the trees along Route EW. Mrs Bullpitt's position on the left-hand side of the one-way Route NS, twelve metres from the intersection but less than that as the buggy straightened up from its turn into it, is entirely consistent with Mr Davies suddenly becoming aware of something in the road and reacting. By the end of his evidence, PC Knight acknowledged that he could not say that all careful and competent drivers would have seen Mrs Bullpitt, at least in time to avoid a collision. The prosecution's repeated assertion that "She was there to be seen", must be tempered by the actual evidence, which is very much less clearcut and, in my judgment, an inadequate foundation upon which a jury could convict.

31. Thereafter there is the rather unsatisfactory evidence that included some of PC Knight's own conclusions prior to his signing up to the joint expert statement, even though the joint expert statement plainly added to, amended and/or clarified his position on issues of central importance. Mr Moore acknowledged during submissions, following an observation from the Court, that it was a surprise in the

way some of PC Knight's evidence deviated from the joint expert statement. It appeared to the Court that the status of the joint expert document and his direct involvement in it seemed to be lost on PC Knight, such that a good deal of it had to be cross-examined back in by the defence. This procedure goes against the entire purpose of the CrimPR relating to expert evidence which is intended to narrow the issues to assist the parties and the jury. The effect of the way in which PC Knight's evidence came out was that overall it provided a confusing picture. Although Mr Dawson referred to PC Knight's concessions in evidence, a number of these concessions were no more than what PC Knight had signed up to in the joint expert statement.

32. Beyond the confusion generated by reference to original evidence that had been superseded, some of the prosecution expert evidence was based on research relevant to standard motor vehicles and not to left-hand drive, speed limited, converted golf buggies which would not be legal to drive on any road. This had to be elicited in cross-examination. The absence of research that more properly resembles the facts in this case, and the need to apply scientific standards drawn from wholly different types of vehicles and driving circumstances, underlines the particularly unusual nature of its factual matrix.

33. The prosecution's other refrain in this case is that a careful and competent driver would "just slow down". Each and every analogy that the prosecution sought to draw, whether in writing or orally, whether in submissions or in response to observations from the court, involved high speeds, often motorway driving. Such analogies are of little, if any, value. Indeed, the difficulty in alighting upon any type of analogous driving to that involved in this case simply serves again to highlight the very unusual, factual matrix engaged.

34. As to the speed, the prosecution's assertion is not matched by the actual state of the evidence at the end of its case. Some realism, in my judgment, is required to be

injected into the scenario that surrounds this allegation. Mr Davies was driving a specially adapted vehicle intended for the conditions that might be encountered within Center Parcs. He was driving at approximately 9mph, which is in real life already a very slow speed, however it might appear on screen. Seeking to compare the possible effects of the sun in the instant case with fog on the motorway, for example, and the need to slow down is simply inapposite.

35. These observations give rise to a crucial aspect of the jury's task in this particular case. The prosecution caution against trial by expert, but that usually laudable sentiment carries rather less weight here. This is because, rather unusually for a driving case, the jury are faced with a very brief instance of very slow driving in a type of vehicle (including it being left-hand drive) and in circumstances where they are hardly likely to be able to bring much of their knowledge and experience of the world to bear. There is every likelihood that none of them have regular (or probably any) experience either of driving for periods at 9mph or of driving the type of converted golf buggy-style vehicle involved in this case. As a result, they would have to be far more reliant on the expert evidence in seeking to establish the required standard and in seeking to judge Mr Davies against that standard.

36. Due to my assessment of that expert evidence, as I have set out above, I am satisfied that a jury properly directed could not convict based on it.

The prepared statement

37. To what extent, if at all, is the prosecution's position enhanced by the contents of Mr Davies' prepared statement? Taking this evidence at its highest, and putting aside the context of its formulation and its intention to deny the offence alleged, even if one were to accept as legitimate the spotlighting of specific words within the document and the invitation to the jury to interpret them in a way that was favourable to the prosecution, the same challenge overall would remain for the jury, being faithful to their directions, in settling upon the standard of a careful and competent driver in the

very unusual circumstances of this case. On PC Knight's evidence, a careful and competent driver might not have seen Mrs Bullpitt and, thus, the jury would be left no further forward in having reliable evidence upon which they could convict. For the sake of completeness, they would certainly not be in a position properly to convict based solely on any interpretation of words used in the prepared statement and rejecting all the expert evidence.

Conclusion

38. For the reasons I set out above, I have concluded that there is insufficient evidence upon which a jury properly directed could convict in this case. The submission of no case to answer therefore succeeds.

39. As we are in the criminal law arena all involved will I trust appreciate that this ruling is a purely legal one assessing whether the evidence thus far adduced is sufficient that a properly directed jury could convict. I have concluded that the evidence does not satisfy that purely legal test. My judgment is absolutely no reflection on anything done or not done by Mrs Bullpitt.

[Following the handing down of this judgment, the Prosecution applied for time to consider whether to seek to appeal it. At a hearing on 10 February 26, the Prosecution confirmed that there would be no appeal, paving the way for the publication of this judgment in the interests of open justice.]