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*384 Regina v Derwentside Justices

Positive/Neutral Judicial Consideration

Court
Divisional Court

Judgment Date
20 February 1995

Report Citation
[1996] R.T.R. 384

Queen's Bench Division

McCowan LJ and McKinnon J

20 February 1995

Disqualification—Driving while disqualified—Evidence—Court's register showing disqualified driver with same name and date of birth as accused—Strict proof of accused being same person as entry on register—Whether necessary— Police and Criminal Evidence Act 1984 s 73(1)(4) — Road Traffic Act 1988 s 103(1) — Road Traffic Act 1991 s 19 — Magistrates' Courts Rules 1981 (SI 1981 No 552) r 68

Section 73 of the Police and Criminal Evidence Act 1984 provides:

> '(1) Where in any proceedings the fact that a person has in the United Kingdom been convicted … of an offence … is admissible in evidence, it may be proved by producing a certificate of conviction … relating to that offence, and proving that the person named in the certificate as having been convicted … of the offence is the person whose conviction … of the offence is to be proved. … (4) The method of proving a conviction … authorised by this section shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction …'

Section 103 (1) of the Road Traffic Act 1988 [*as substituted by* section 19 of the Road Traffic Act 1991] provides:

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> ‘A person is guilty of an offence, if while disqualified for holding or obtaining a licence, he …(b) drives a motor vehicle on a road.’

Rule 68 of the Magistrates' Courts Rules 1981 (SI 1981 No 552) provides:

> ‘The register of a magistrates' court …shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.’

The applicant was charged with driving while disqualified contrary to section 103 of the Road Traffic Act 1988 . At the hearing before justices the sole witness was a police constable whose evidence was that he knew the applicant to have been disqualified for three years by the same court within three years of the date of the present charges before the court and on 12 February 1994 the constable had seen the applicant driving a car and, although the constable pursued the applicant, the constable was unable to apprehend the applicant that day. The constable saw the applicant two or three days later and spoke to him about the incident. The applicant denied that he had been driving on the day in question. The constable when cross-examined, accepted that he had not been present in court when the applicant had been disqualified. The court's register was produced, pursuant to rule 68 of the Magistrates' Courts Rules 1981 , to show that a person with the same name and date of birth as the applicant had been disqualified for driving at the same court for a period of three years from 10 June 1991. The clerk of the court, who had been present in court when the applicant was disqualified in June 1991, was not called to give evidence. A submission by defence counsel that there was no evidence that the person disqualified in June 1991 was the applicant was rejected and the applicant was convicted.

On an application for judicial review:

Held, granting the application, that in proceedings during a trial it had never been accepted that the mere matching of personal details with those upon a certificate of conviction was sufficient

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to establish or identify an accused as the person earlier **385* convicted (pp 386L–387A, C); that, to avoid obvious mistakes, strict proof was required by evidence provided in one of three ways: by an admission by or on behalf of the accused, pursuant to section 10 of the Criminal Justice Act 1967 ; by evidence of fingerprints, pursuant to section 39 of the Criminal Justice Act 1948 ; or by evidence of a person present in court when the accused was convicted (p 386H–J); that, accordingly, in the instant case, none of those methods having been adopted, the justices were wrong in law to convict the applicant in the absence of an essential ingredient of the offence (p 387D); and that, accordingly, certiorari would issue to quash the conviction (p 387F).

No case is referred to in the judgments or was cited in argument .

Application for judicial review

The applicant, David Alan Heaviside, sought judicial review of his conviction by justices sitting at Derwentside Magistrates' Court on 26 May 1994 of driving while disqualified contrary to section 103(1)(b) of the Road Traffic Act 1988 . The relief sought was an order of certiorari to quash the conviction. The grounds on which the relief was sought were that, although the register of the magistrates' court was produced to show that a person with the same name and date of birth as the applicant had been disqualified from driving by the same court on 10 June 1991, no evidence was adduced to prove that the person named in the register as having been disqualified was the applicant; such evidence could have taken the form of fingerprints, admission pursuant to section 10 of the Criminal Justice Act 1967 , or evidence from a person present when the conviction was recorded; but none was produced.

The facts are stated in the judgment of McKinnon J.

Representation

Richard Bloomfield for the applicant.
Simon E Wood for the prosecutor.

JUDGMENT

MCCOWAN LJ

I will ask McKinnon J to give the first judgment.

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MCKINNON J

This is an application for judicial review, leave having been given by Latham J on 28 October 1994. The relief sought is an order of certiorari to quash the applicant's conviction by the Derwentside Justices, on 26 May 1994, of driving whilst disqualified on 12 February 1994.

It is submitted that there was no evidence before the justices of an essential ingredient of that offence, namely, that the applicant was, on 12 February 1994, a disqualified driver, and that, accordingly, the justices were wrong in law in convicting him.

The sole witness for the prosecution was Police Constable Ellis, who gave evidence that on 12 February 1994 at Sherburn Terrace, Consett, he saw the applicant, whom the constable knew to be a disqualified driver, driving a car. The constable pursued the applicant but was unable to apprehend him on that day. The constable saw the applicant two to three days later. He then spoke to the applicant about the incident on 12 February 1994. The applicant did not wish to be interviewed. He denied that he had driven on 12 February.

When cross-examined Constable Ellis accepted that he had not been present in court when the applicant was disqualified from driving.

Subject to its being accepted that the applicant was a disqualified driver at the material time, the prosecution indicated that it would close its case. That elicited no response from the applicant's solicitor, who appeared on the applicant's behalf. What then happened was that the court's register ***386** was produced which showed that a person with the same name and date of birth as the applicant, had been disqualified for driving at the same court (Derwentside Magistrates' Court) on 10 June 1991 for a period of three years. The court's register was produced pursuant to rule 68 of the Magistrates' Courts Rules 1981 (SI 1981 No 552), which reads:

> ‘The register of a magistrates' court …shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.’

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The prosecution then decided not to call the clerk of the court, who had apparently been present in court when the applicant was disqualified from driving on 10 June 1991 and closed its case. Despite a submission by the applicant's solicitor that there was no evidence that the person disqualified from driving on 10 June 1991 was the applicant, the justices convicted the applicant of driving whilst disqualified.

The principal provision relating to the manner of proof of convictions and acquittals is now section 73 of the Police and Criminal Evidence Act 1984 , which provides:

> '(1) Where in any proceedings the fact that a person has in the United Kingdom been convicted … of an offence … is admissible in evidence, it may be proved by producing a certificate of conviction … relating to that offence, and proving that the person named in the certificate as having been convicted … of the offence is the person whose conviction … of the offence is to be proved. … (4) The method of proving a conviction … authorised by this section shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction …'

Thus, there are two requirements. First, the production of a certificate of conviction and, secondly, proof that the person named in the certificate, as having been convicted, is one and the same person, as in the instant case, the applicant.

It is accepted that production of the court's register pursuant to rule 68 complied with section 73 of the Police and Criminal Evidence Act 1984 , because it is another method of proving a conviction referred to in section 73(4) of that Act.

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Mr Bloomfield, on behalf of the applicant, submits today that the second requirement in section 73(1) had not been met, as no evidence was given that it was the applicant who had been disqualified for driving on 10 June 1991.

That could have been done in three ways as he submitted: first, by an admission by or on behalf of the applicant pursuant to section 10 of the Criminal Justice Act 1967 ; or, secondly, by evidence of fingerprints pursuant to section 39 of the Criminal Justice Act 1948 ; or, thirdly, by evidence of a person who was present in court when the applicant was convicted on 10 June 1991.

In the instant case none of those methods of proof has been adopted. It has, as Mr. Bloomfield submitted, simply been assumed, because the name and date of the birth were the same, that it was, indeed, the applicant who had been disqualified for driving on 10 June 1991. That, as Mr Bloomfield submitted, did not amount to the strict proof requirement. Mr Wood, on behalf of the prosecutor, submits that strict proof was not required; that it was satisfactory in this case to provide sufficient evidence of the identity of the convicted person; that the justices should have before them (as they did) the full name and date of birth which matched, and as to an address, that there was an address on the court register which corresponded to one of the addresses at which the applicant apparently had lived at some time.

As far as I am aware, it has never been accepted that the mere matching of the personal details, whether the name, address or date of birth of a *387 defendant, with those upon a certificate of conviction is sufficient to establish or identify the defendant as the person earlier convicted. It may have been the defendant; but, to avoid obvious mistakes being made, strict proof is required. That is provided by evidence in one of the three ways I have described.

It is significant that section 39 of the Criminal Justice Act 1948 survives the enactment of section 73 of the Police and Criminal Evidence Act 1984 , indicating that there was not in section 73 an abandonment of the usual requirement of strict proof of identity in cases where the identity of a convicted person was required to be proved.

I should add that no assistance is to be derived from sections 102 or 104 of the Magistrates' Court Act 1980 , or from section 31 of the Road Traffic Offenders Act 1988 . Section 102 of the Act of 1980 relates to committal proceedings; section 104 relates to the stage after the defendant

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has been convicted of a summary offence, as does section 31 of the Act of 1988. In the instant case we are concerned with proceedings during a trial.

Accordingly, I am bound to conclude that there was no evidence as required that it was the applicant who was disqualified from driving on 10 June 1991. The justices were, therefore, wrong in law in convicting the applicant in the absence of evidence of an essential ingredient of the offence.

It is quite clear that the prosecution should have called the clerk of the court, if indeed he was actually present in court on 10 June 1991, to prove that on that occasion it was the applicant who was disqualified from driving. Whether he would have been able to identify the applicant, I do not know.

I would allow this application and order that certiorari should issue to quash the applicant's conviction.

McCowan LJ

I agree.

Reported by Mrs Clare Barsby, Barrister ***388**

Representation

Solicitors for the applicant: Row & Scott , Newcastle upon Tyne
Solicitors for the prosecutor: Crown Prosecution Service , North Area

Application granted. Order of certiorari to quash justices' order convicting applicant. Order for payment of applicant's costs out of central funds

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