

CHARALAMBOS CONSTANTINOU,

Appellant,

CHARALAMBOS
CONSTANTINOU

v.

THE POLICE

THE POLICE,

Respondents.

(Criminal Appeal No. 3362).

Road Traffic—Careless driving, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332—Young boy knocked down by Appellant's motor vehicle whilst attempting to cross the road in front and to the right of said motor vehicle and immediately after a bus coming from the opposite direction had passed by—Finding of careless driving based on non-expert evidence about length of brake marks, and on evidence of the driver of the said bus—No safe conclusion could be drawn from said brake marks, in the absence of expert evidence regarding their full significance concerning speed of the vehicle—Nor could the said driver's evidence be relied upon as being accurate in the particular circumstances of this case—Prosecution having to establish positively careless driving as part of the conduct of the accused, conviction has to be quashed.

Evidence—Brake marks—Expert evidence needed.

Brake marks—Need of expert evidence to explain the full significance of brake marks concerning the speed of the vehicle at the time.

This is an appeal against conviction of the offence of careless driving contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332. The finding of the trial Judge of careless driving was mainly based on non-expert evidence about length of brake marks and on evidence of the driver of a bus proceeding in the opposite direction. Allowing this appeal and quashing the conviction, the Court:—

Held, (1). In the absence of any expert evidence on this point (*viz.* length of brake marks) no safe conclusion could be drawn from said brake marks concerning the speed at which the Appellant driver was proceeding at the time (*see* in this

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respect *HjiGeorghiou v. The Police* (reported in this Part at p. 86 *ante*).

(2) To prove the commission of the offence in question the prosecution must establish positively careless driving as part of the conduct of the accused (see *Triftarides v. The Police* (1968) 2 C.L. R. 140, at p. 144 and *Andreou v. The Police* (reported in this Part at p. 55, *ante*)). But in the circumstances of this case, we have reached the conclusion that the conviction of the Appellant cannot be sustained. Conviction quashed.

Appeal allowed.

Cases referred to:

HjiGeorghiou v. The Police, (reported in this Part at p. 86, *ante*);

Triftarides v. The Police (1968) 2 C.L.R. 140, at p. 144;

Andreou v. The Police (reported in this Part at p. 55, *ante*).

Appeal against conviction.

Appeal against conviction by Charalambos Constantinou who was convicted on the 26th June, 1972 at the District Court of Nicosia (Criminal Case No. 10779/71) on one count of the offence of driving without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332 and was sentenced by Papaioannou, Ag. D.J. to pay a fine of £30.— and was further disqualified from holding or obtaining a driving licence for a period of six months.

L. Papaphilippou, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: The Appellant has appealed against his conviction in respect of the offence of driving a motor vehicle without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

The salient facts of the case appear to be as follows:—

About midday on the 23rd April, 1971, while the Appellant was driving a motor vehicle—a taxi—on a road in Strovolos,

and immediately after a bus which was coming from the opposite direction had passed by, a young boy attempted to run across the road, in front and to the right of the approaching vehicle of the Appellant. The Appellant applied immediately the brakes but he did not manage to avoid hitting the boy, who was injured as a result of the collision.

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In view of the fact that the brake marks left by the vehicle of the Appellant were nearly 34 feet long and because the driver of the bus testified that he estimated the speed of the Appellant's vehicle to be about 35 miles per hour the trial Court found the Appellant guilty as charged.

In our opinion the estimate of the driver of the bus regarding the speed of the vehicle of the Appellant could not have been relied on as being accurate because at the time the two vehicles were passing by each other from opposite directions and it was therefore quite possible for the driver of the bus to over-estimate, in view of the speed of his own vehicle, the speed of the oncoming vehicle of the Appellant. Nor, in the absence of any expert evidence on this point, could there be drawn from the said brake marks any safe conclusion concerning the speed at which the Appellant was proceeding (see in this respect *HjiGeorghiou v. The Police* (reported in this Part at p. 86, *ante*)).

It is true, bearing in mind the length of the brake marks, that the Appellant must have seen the boy from a distance longer than 34 feet; but it cannot, in the absence of any expert evidence regarding the "thinking distance" that must have preceded the application of the brakes, be found exactly how far away was the Appellant when he first saw the boy.

To prove the commission of the offence in question the prosecution must, as pointed out in, *inter alia*, *Triftarides v. The Police* (1968) 2 C.L.R. 140, at p. 144, establish, positively, careless driving as part of the conduct of the accused; and the *Triftarides* case has been recently applied in *Andreou v. The Police* (reported in this Part at p. 55, *ante*).

In the particular circumstances of this case—which are similar to a certain extent to those of the *Andreou* case—we have reached the conclusion that the verdict of guilty of the Court below cannot be sustained because on the basis of the material on record the Appellant could not have been found

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guilty with the certainty required in a criminal trial; The Appellant was faced with a situation in which a boy made a sudden dart across the road in front of him; as this happened immediately after a bus had passed by while coming from the opposite direction and as the boy came from the right of the Appellant it seems that the boy came into the field of vision of the Appellant after the bus had passed, and at a rather short distance away; and the Appellant applied immediately his brakes in an effort to avoid a collision with the boy. We cannot hold that there has been established positively, beyond a reasonable doubt, careless driving on the part of the Appellant; and counsel for the Respondents, rightly in our opinion, did not support the conviction.

We, therefore, allow the appeal and set aside the conviction of the Appellant, as well as the sentence imposed on him.

Appeal allowed.