

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Mohan's Application [2008] NIQB 106

AN APPLICATION FOR JUDICIAL REVIEW BY MARINA MOHAN

MORGAN J

1. This is an application for leave to apply for judicial review to quash the decision of the PPS made on or about 9 July 2008 to prosecute John Murtagh for driving without due care and attention on 2 May 2007.

The background

2. Approximately 5:45 p.m. on 2 May 2007 the applicant's husband was driving along the main Dungannon to Aughnacloy road. John Murtagh was driving a motor vehicle along the Castletown Road which is a minor road which intersects with the main road along which the applicant's husband was travelling. Mr Murtagh's vehicle emerged from the minor road without stopping as a result of which there was a collision which caused the death of the applicant's husband.

3. Shortly before the first anniversary of her husband's death the applicant was contacted by Inspector Swan of PSNI who advised her that he had recommended that Mr Murtagh be prosecuted for dangerous driving causing death. On 9 July 2008 Inspector Swan again contacted the applicant to advise her that Mr Murtagh had been charged with driving without due care and attention. The explanation conveyed by Inspector Swan was that Mr Murtagh had said that he did not know the junction.

4. On 25 July 2008 the applicant's solicitor wrote to the PPS to ask for a review of the decision. That correspondence enclosed a bundle of letters disclosing the horrendous effects that the loss of her husband has had upon the applicant and her children and asserts that Mr Murtagh used this junction on a regular basis. Inspector Swan contacted the applicant on 28 July 2008 to ask

her how she knew that Mr Murtagh was familiar with the junction. Although in her grounding affidavit the applicant did not provide any information in relation to that matter she says that Inspector Swan told her that he was well aware that Mr Murtagh knew the junction and that this had already been stated during interview with him.

5. A further e-mail of 5 August 2008 from the applicant's solicitor contained information that Mr Murtagh was local to the area, living in Eglis, and that he made deliveries to a motor business in Aughnacloy so that he was likely to be familiar with the junction.

6. The applicant exhibited a witness statement from Damien Coll a forensic scientist who had been requested to examine the collision scene in an attempt to establish the sequence of events surrounding the collision. He found that at 60 m prior to the junction on the minor Castletown Road the major road was not in sight as a result of hedges and buildings. A bus shelter also obstructed the view of the "GIVE WAY" sign which had been erected. At 44 metres prior to the junction the sign was partly in view and partially obstructed by the hedge line. The main road was still not in view. At 25 m prior to the junction the sign was fully in view and the main road became partially visible. Mr Coll concluded that the collision occurred when Mr Murtagh's car emerged at speed from the minor road into the path of the deceased's car. He estimated that the speed of Mr Murtagh's car at the time it emerged was approximately 40 mph. He expressed the opinion that due to the road topography and the obscuring of the signage present on the day of the collision Mr Murtagh did not realise or realised much too late that he was approaching the junction and as a result emerged from the minor road at speed into the path of the other vehicle. Although that opinion was correctly criticised on the basis that Mr Coll could not know what was in Mr Murtagh's mind it emphasised the importance of knowledge of the junction. Mr Coll provided a table showing speeds and reaction times and demonstrated that since the sign was not fully visible until only 24 m prior to the junction the driver may well have emerged from that point into the main road without having had an opportunity to slow.

7. The respondent was invited to appear at the leave hearing and in light of the allegations about what occurred at the interview of Mr Murtagh I adjourned the hearing to enable the respondent to provide a record of the interview. The record shows that Mr Murtagh was indeed questioned about his familiarity with the minor road. He explained that he had been on the main road on quite a few occasions in the course of his work as a driver. He said that his knowledge of the minor roads was limited to the fact that he possibly had delivered furniture on them years ago. He had no recollection for the events prior to the accident and could not recollect how he had come to be on this minor road on the day of the collision. When interviewed by the

PPS Inspector Swan said that he had not informed the applicant that Mr Murtagh was familiar with the junction.

The applicant's submissions

8. The applicant relies in particular on the "Code for Prosecutors" issued by the Public Prosecution Service which states that generally the Prosecution Service will prosecute for the most serious offences which are supported by the evidence. In this case the applicant contends that the appropriate charge is one of causing death by dangerous driving contrary to article 9 of the Road Traffic (NI) Order 1995.

"9. A person who causes the death of, or grievous bodily injury to, another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence."

The meaning of dangerous this is set out at article 11 of the 1995 Order.

"11. - (1) For the purposes of Articles 9 and 10 a person is to be regarded as driving dangerously if (and, subject to paragraph (2), only if)-

(a) the way he drives falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of Articles 9 and 10 if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In paragraphs (1) and (2) "dangerous" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those paragraphs what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused."

The leave test

9. I have had the benefit of full argument from the applicant and respondent in relation to this matter. I further invited the respondent to disclose the transcription of the interview with Mr Murtagh to facilitate the applicant's submissions. I consider that the test which I should apply is that stated by the Court of Appeal in Omagh District Council's Application [2004] NICA 10, namely, whether the applicant has an arguable case with a reasonable prospect of success.

Conclusion

10. In light of the topography of the road, the fact that the main road was not visible from the minor road until the motorist on the minor road was within 25 m of the major road and the obscuring of the "GIVE WAY" sign there was no serious dispute that it would not be obvious to a competent and careful driver that he was driving dangerously unless he had knowledge of the junction. It is common case that Mr Murtagh lives within 5 miles of the scene of the accident. He also admits that he regularly travelled on the main road where the accident occurred. None of those factors, however, provide evidence that he was familiar with the minor road.

11. There is evidence, however, that he was on the minor road on the day of the accident and this was properly followed up at interview. On its own it does little to advance the case that he was familiar with the minor road. As a result of the representations of the applicant Inspector Swan was asked to carry out further investigation in relation to Mr Murtagh's knowledge of the minor road. Neither during the investigation nor indeed during this hearing was the applicant able to bring forward any evidence to advance the proposition that Mr Murtagh was familiar with the road prior to the accident. In those circumstances it was in my opinion inevitable that the PPS would have to approach the decision as to prosecution in this case on the basis that the evidence did not establish knowledge of the minor road on the part of Mr Murtagh.

12. Two further points arise. Firstly it is alleged that the PPS failed to carry out adequate investigation of the incident. In argument this centred on the investigation as to whether Mr Murtagh was familiar with the junction. There is in my view no evidence to support this allegation. On the contrary the evidence establishes that the PPS asked Inspector Swan to carry out further investigations when the issue was raised by the applicant and properly considered the materials provided by the applicant in relation to the question of knowledge.

13. The second matter relates to the evidence that a woman heard a car accelerate towards the junction prior to the collision. The evidence indicates

that Mr Murtagh's car was travelling at 40 mph in fifth gear at the time of the collision. The calculations carried out by Mr Coll demonstrate either that the driver on the minor road at that speed would have had no opportunity to brake or accelerate or if he did so that the opportunity would have been so late as to make no difference to the tragic outcome.

14. Having regard to the matters set out above I do not consider that the applicant has demonstrated an arguable case with a reasonable prospect of success that the decision of the PPS to prosecute Mr Murtagh for careless driving was unlawful. Accordingly I must refuse leave to apply for judicial review.