

(All England Law Reports, 1962, page 868)

[*Queen's Bench Division*, (Lord Parker, C.J.; Streatfeild, Winn, Widgery, and Brabin, J.J.), 25 May, 6 June, 1962]

WATMORE v. JENKINS

Road Traffic—Driving While Under the Influence of a Drug—Diabetic Driver Overcome by Effect of Insulin for Reasons Unknown to Himself—Whether Guilty of Offence Under Road Traffic Act 1960 (8 and 9 Eliz. 2c. 16), s. 6 (1).

Road Traffic—Dangerous Driving—Driving Without Due Care and Attention—Diabetic Driver Overcome During Part of Journey by Effect of Insulin for Reasons Unknown to Himself—Defence of Automatism—Whether Automatism Excluded Beyond Reasonable Doubt—Road Traffic Act 1960 (8 and 9 Eliz. 2 c. 16), s. 2 (1), s. 3 (1).

The respondent, who had driven for over 20 years, covering 15,000 miles a year and had no previous convictions, had been a diabetic for eight years. Every morning, on medical instructions, he injected himself with insulin of the lente type, partly semi-lente and partly ultra-lente. He fixed his own dosages in accordance with the results of twice daily urine tests. In February 1961 he suffered a severe attack of jaundice and was in hospital for five weeks, in consequence of which his insulin dosage was raised and he was subjected to a strict diet. He returned to normal life on 21 May 1961, and his diet was relaxed. This entailed a further increase in the normal insulin dosage, and for a period of 28 days prior to 19 June 1961 he injected himself with doses varying between 70 and 74 units. On 19 June he injected himself with a normal dose, comprising 31 semi-lente and 40 ultra-lente units, and he had a slightly lighter than normal day at his office and consumed his normal amount of food. At about 6.45 p.m. he left the office of a client in Clapham to drive to his home at Coulsdon. Having driven normally as far as Mitcham, he had no recollection of what occurred thereafter. The evidence showed that for five miles on roads of varying width and character, his car proceeded at varying speeds veering from one side of the road to the other, passing traffic lights, narrowly missing various vehicles, two of which had to take evasive action, and that he finally crashed into the back of a stationary car at a place and road well past his home. He was found to be in a confused and dazed state and almost inarticulate. He was not then sweating. He was taken to hospital where he started to sweat and was given glucose, whereupon he returned to full consciousness and the confusion left him. He was given a urine test, which revealed an absence of sugar and acetone. He had taken no alcohol, nor had he ever been advised by his doctors not to drive. He was charged with (i) driving whilst unfit to drive through drugs, contrary to s. 6 (1) of the Road Traffic Act 1960*; (ii) dangerous driving, contrary to s. 2 (1) of that Act†; and (iii) driving without due care and attention, contrary to s. 3 (1) of that Act‡.

*Section 6 (1) reads, so far as material: "A person who, when driving . . . a motor vehicle on a road . . . is unfit to drive through . . . drugs shall be liable . . . (b) on summary conviction, to a fine not exceeding £100 or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment . . ."

†Section 2 (1) reads, so far as material: "If a person drives a motor vehicle on a road . . . in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable . . . (b) on summary conviction, to a fine not exceeding £100 or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment . . ."

‡Section 3 (1) reads, so far as material: "If a person drives a motor vehicle on a road without due care and attention . . . he shall be liable on summary conviction to a fine not exceeding £40 . . ."

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The dose of insulin with which the respondent had injected himself that day was within the dosage prescribed by his doctor as appropriate for the phase of recovery from jaundice which the doctor judged that he had then attained, and the respondent, during part of his journey where he drove normally, was not unfit to drive through insulin. The justices found that the respondent was in a state of automatism from the point when he was first observed a mile or so from Mitcham to the point where he finally crashed. They dismissed the information under s. 6 (1) of the Act of 1960, being of the opinion that the prosecution had failed to satisfy them beyond reasonable doubt that the respondent's incapacity was self-induced or that his condition was caused by the insulin he had taken, he having been overtaken by a hypoglycaemic episode and coma through the fall in his cortezone level owing to an improvement of his liver function, which caused him to become unfit to drive. They also dismissed the informations under s. 2 (1) and s. 3 (1) of the Act, being of the opinion that the respondent was in a state of automatism. On appeal,

Held: (i) The acquittal on the charge under s. 6 (1) would be upheld, since the justices were entitled on the special facts of the case to entertain a reasonable doubt whether the injected insulin was more than a predisposing or historical cause comprised in a situation or state of equilibrium on which the reduction of cortezone operated as an effective cause of the hypoglycaemic episode.

(ii) A state of automatism connoted in law no wider concept than involuntary movement of a person's body or limbs, and on the justices' findings of primary facts they could not reasonably have reached their conclusion that the respondent proceeded for five miles on a road which was not straight in a state of automatism throughout the whole of that distance; therefore, as there was no doubt that the car had proceeded dangerously and the respondent had been its driver at the time, the case would be remitted to the justices with a direction to convict on the charge under s. 2 (1) of the Road Traffic Act, 1960.

[As to driving when under the influence of drugs, see 33 *Halsbury's Laws* (3rd Edn.) 626, 627, para. 1057.

As to dangerous driving, see *ibid.*, 622, 623, para. 1048.

For the Road Traffic Act 1960, s. 2, s. 3, s. 6, see 40 *Halsbury's Statutes* (2nd Edn.) 712, 714, 717.]

Case referred to:

Bratty v. A.-G. for Northern Ireland, [1961] 3 All E.R. 523; [1961] 3 W.L.R. 965.

CASE STATED. This was an appeal by way of Case Stated by justices for the county of Surrey in respect of their adjudication as a Magistrates' Court sitting at Wallington on 25 October 1961. On 22 July 1961 the appellant, Roy Watmore, a police constable, preferred three informations against the respondent, Reginald Hugh Jenkins, charging him that, on 19 June 1961, at London Road, Manor Road North, Manor Road, and Woodcote Road, Wallington, Smithambottom Lane, and Woodcote Grove Road, Coulsdon, Surrey, (i) he drove a motor vehicle on a road whilst unfit to drive through drink or drugs, contrary to s. 6 (1) of the Road Traffic Act 1960; (ii) he drove a motor vehicle in a manner dangerous to the public having regard to all the circumstances of the case, contrary to s. 2 (1) of the Act of 1960, and (iii) he drove a motor vehicle without due care and attention, contrary to s. 3 (1) of the Act of 1960. The following facts were found as recorded in para. 3 of the Case Stated,

3. (a) The respondent, a chartered accountant aged 46, had been a diabetic for the past eight years. Under the guidance of his own doctor and Dr Maclean, a consultant physician to Guy's Hospital, he had, during the past eight years, been injecting himself every morning with insulin of the lente type, part semi-lente and part ultra-lente. The respondent had fixed his own dosage and the proportion of semi- to ultra-lente insulin in accordance with the results of twice daily urine tests. He kept a written record of the amount injected. (b) In February 1961 the respondent had suffered a serious attack of infective hepatitis (jaundice) and had been admitted to Guy's Hospital for five weeks. In consequence, his insulin dosage had been raised and he had been subjected to a strict diet. (c) On 1 May 1961 Dr Maclean advised the respondent that he could return to a normal life at Whitsun (21 May 1961) and his diet was relaxed. This entailed a further increase in the normal insulin dosage and, during the 28 day period ending on 19 June 1961, the date of the alleged offences, the respondent had been injecting himself daily with doses varying between 70 and 74 units. On 19 June 1961 he had injected himself with such a normal dose, comprising 31 semi- and 40 ultra-lente units. (d) On 19 June 1961 the respondent had had a slightly lighter than normal day at his office, and had consumed his normal amount of food. (e) The respondent had driven for over 20 years; he covered 15,000 miles a year and had no previous convictions. (f) On the day in question, he left the office of a client at Clapham at about 6.45 p.m. to drive to his home at Groveswood Hill, Coulsdon. Having driven normally as far as Mitcham the respondent, who was alone in his car, had no recollection of what occurred following his turning out of London Road into Carshalton Road, Mitcham Junction. (g) From that point the respondent's car proceeded in a southerly direction a distance of over five miles on roads of varying width and character; such roads contained three traffic light controlled junctions and numerous bends, and the respondent's car finally crashed in Woodcote Grove Road, Coulsdon. (h) In London Road, Hackbridge, and London Road, Wallington, the car proceeded at 25 to 28 miles per hour, and veered from one side of the road to the other, and it hit the nearside kerb on one occasion. In Manor Road, Wallington, it went straight over the first set of traffic lights, narrowly missing a stationary car, and hit the nearside kerb again further along that road. The car was next observed by a police constable in Woodcote Grove Road, Coulsdon. No evidence was heard as to the respondent's manner of driving in Woodcote Road, Wallington, or Smithambottom Lane, Purley, but there were two further sets of traffic lights in that stretch of road. (i) In Woodcote Grove Road, near the junction of Bramley Avenue, the car was proceeding on its wrong side of the road, and it caused the police constable, who was going in the opposite direction on a motor cycle, to pull into the kerb and stop. At this point the respondent had already overshot his home turning by a quarter of a mile. (j) A short time later, the driver of a north-bound car who was traversing the railway bridge in Woodcote Grove Road had to take hasty evading action to avoid the respondent's car which swerved towards him on its wrong side of the road. It swerved back to its nearside and scraped that side of the railway bridge as it did so. The car then proceeded at approximately 40 miles per hour diagonally across the road and struck a Ford car travelling in the opposite direction a glancing blow on its nearside. It finally crashed into the back of an Austin car parked by the offside kerb in front of the Cooperative Hall in Woodcote Grove Road near the junction of Chipstead Valley Road. The respondent's car was halted by the impact. (k) In the circumstances described above the respondent's car proceeded in a manner dangerous to the public. (l) Immediately after the impact, the respondent was found sitting in the car in a confused and dazed state and almost inarticulate. He was not then sweating, but he had suffered minor injuries to the forehead and right hand. (m) He was taken to Purley Hospital and, shortly after arriving, he started to sweat. He was there examined by Dr Maiya, and remained in a confused and irritable condition until he was given glucose some 15 minutes after his arrival. He then returned to full conscious-

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ness and the confusion left him. It then became possible to persuade the respondent to undertake a urine test, the attempts at which had earlier been unsuccessful, and this revealed an absence of sugar and acetone. The respondent was not suffering from alcohol and no suggestion was made that he had taken any. (n) The respondent was not prohibited from driving by the fact that he was diabetic and, prior to 19 June 1961, he had never been advised by his doctors not to drive.

The justices further found in para. 4 of the Case Stated:

4. The justices were much assisted by the expert witnesses called before them, Dr Maclean, Dr Maiya, and Dr Francis Camps, between whom there was a large measure of agreement. Their evidence enabled them to find as follows: (i) A diabetic needed more insulin to metabolise his sugar than a normal person, and he must live his life to a regular and normal pattern as far as food and physical exercise were concerned, otherwise the balance of his metabolism would not be maintained. An overplus of bodily sugar would result in a diabetic attack or coma, whilst an overplus of bodily insulin, or bodily and injected insulin, would cause an hypoglycaemic episode or coma. Regular and accurate doses of insulin were, therefore, vital to the diabetic to maintain this balance. Lente insulin was of two kinds, semi-lente and ultra-lente, the former being effective for six to eight hours and the latter from the end of that period until about 20 hours after injections. (ii) The normal liver was able to discharge sugar in the form of glycogen into the bloodstream to balance temporarily the overplus of insulin which occurred in the body. Sweating ensued, and this was a warning to the diabetic to take sugar to restore the balance. Thus a hypoglycaemic episode was usually presaged by an outbreak of sweating and the victim would take immediate remedial measures. (iii) An attack of infective hepatitis would damage the liver and cause the body's hydrocortezone level to rise. Since this substance was antagonistic to insulin, the normal insulin dosage had to be raised to restore the balance. This accounted for the increase in the respondent's normal dose. (iv) There might be an unexpected improvement in the liver condition which would cause the cortezone level to fall and throw the body out of balance. But because the liver had been damaged it might be unable to supply glycogen, in which case there would be no sweating. Thus a hypoglycaemic episode would not be accompanied by the usual warning, and the victim would go into a gradual worsening state of confusion without being aware of it. (v) This state of confusion was the result of oxygen starvation to the higher reaches of the brain. The body might continue to do things it was used to doing, but the will ceased to control the body and the memory lapsed; the condition might be likened to sleep-walking or a fit of epilepsy. (vi) From the point described in para. 3 (f), the respondent was overtaken by a hypoglycaemic episode and then became unfit to drive. The episode came on without the usual sweating symptom for the reason stated in sub-para. (iv). (vii) As the respondent was driving his car when the episode overtook him, he continued to perform the functions of driving, after a fashion. But, from the point he was first observed in London Road, Hackbridge, to the point where he finally crashed in Woodcote Grove Road, Coulsdon, he was in a state of automatism. (viii) The respondent's condition was not caused by an overdose of insulin.

It was contended on behalf of the respondent that (i) the respondent was not prevented from holding a driving licence by the fact that he was a diabetic; he was not even required to declare that fact when applying for a licence. If the respondent had taken an overdose of drugs, or if his unfitness to drive had otherwise been caused by drugs, he would be guilty, but if his unfitness to drive was caused by another factor, viz., a hypoglycaemic episode, brought on by a malfunction of the liver following an attack of infective hepatitis, then he

was not guilty; (ii) the respondent was a diabetic, properly balanced, who had taken a normal dose of insulin, had had a normal day, but had suffered an abnormal and unexpected attack of illness. He could not, therefore, be guilty of a charge under s. 6 of the Act of 1960; (iii) on the charges under s. 2 and s. 3 of the Act of 1960, the respondent had been reduced to a state of automatism. He had, through no fault of his own, been overtaken by an attack of hypoglycaemia which had not manifested itself to him in the normal way by an outbreak of sweating. He had gone into a state of confusion which had been likened by the doctors to a fit of epilepsy or to sleep-walking. He had continued to carry out the functions of driving his car whilst in an automatic state, but could not really be said to be driving at all. Therefore he was not guilty of the offences under s. 2 or s. 3, and since, under s. 6 it was incumbent on the prosecution to prove that he drove the vehicle at the material time, he was, for the same reasons, in addition to those already mentioned, not guilty of an offence under s. 6. It was contended on behalf of the appellant that no *mens rea* was needed to constitute either the offence of driving under the influence of drugs or that of dangerous driving. To suggest that the respondent was entitled to an acquittal because he was not driving of his own volition was to alter the wording of the statute. The respondent's condition was due to the action of the drug insulin.

The justices were of opinion (para. 8 of the Case Stated) that the respondent's contentions were well founded and (i) in regard to the information under s. 6 of the Act of 1960, although they had no doubt that the respondent was unfit to drive, the prosecution had failed to satisfy them beyond reasonable doubt that his incapacity was self-induced, or that his condition was influenced by the insulin he had taken. Accordingly, the information under s. 6 was dismissed. (ii) In regard to the information under s. 2 of the Act of 1960, they had found that the respondent's car was proceeding in a manner dangerous to the public, but that, owing to the abnormal attack which overtook him without warning, he was in a state of automatism. Accordingly, they dismissed that information. (iii) For the same reason they dismissed the information under s. 3 of the Act of 1960, alleging driving without due care and attention.

The cases enumerated below* were cited in the argument of the appeal in addition to that in the judgment.

Paul Wrightson and A. P. Babington, for the appellant.

J. C. G. Burge, for the respondent.

Cur. adv. vult.

*I.e., *H.M. Advocate v. Ritchie*, 1926 S.C. (J.) 45; *Whittall v. Kirby*, [1946] 2 All E.R. 552; *Thompson v. Knights*, [1947] 1 All E.R. 112; *Chapman v. O'Hagan*, [1949] 2 All E.R. 690; *R. v. Minor*, (1955), 15 W.W.R. (N.S.) 433; *Armstrong v. Clark*, [1957] 1 All E.R. 433; *Hill v. Baxter*, [1958] 1 All E.R. 193; *R. v. Wickens*, (1958), 42 Cr. App. Rep. 236; *R. v. Carter*, [1959] V.R. 105; *Cooper v. McKenna*, Ex p. *Cooper*, [1960] Qd.R. 406; *R. v. Spurge*, [1961] 2 All E.R. 688.

6 JUNE. LORD PARKER, C.J.: Winn, J., will deliver the judgment of the Court.

WINN, J., read the following judgment in which he stated the informations and the justices' findings of fact, and continued: Those findings of fact are set out with manifest care and the whole of this Stated Case is characterised by a clarity admirable in relation to the complexity of some of the issues which arose. In them are comprised the primary facts (a) that the dose of insulin with which the respondent had injected himself on the relevant day was within the dosage prescribed by his doctor as appropriate for the phase of recovery from infective hepatitis which the doctor judged that he had then attained, and (b) that, during that part of his drive which lay between Clapham and Mitcham, the respondent was able to drive normally and so was not then unfit to drive through insulin. The justices proceeded to set out in para. 4 of the Case further facts which they found to be established by evidence given before them by the respondent's doctor, a doctor from the hospital to which the respondent was taken immediately after the incidents already described, and a particularly distinguished medical expert, Dr Francis Camps. It appears that there was a large measure of agreement between these witnesses.

Before I read and consider the findings set out in para. 4 of the Case, it is convenient to emphasise that the justices had to consider, when dealing with the first information, two quite different matters: (a) whether the respondent was driving a motor vehicle on any part of the roads referred to in the information of 19 June 1961; (b) whether, whilst so driving, he was unfit to drive through drugs, which means, by force of s. 6 (6) of the Road Traffic Act 1960, "under the influence of . . . a drug to such an extent as to be incapable of having proper control of a motor vehicle". The justices dealt with those two matters by finding (i) that the respondent was in a state of automatism from the point where he was first observed in London Road, Hackbridge, to the point where he finally crashed in Woodcote Grove Road, Coulsdon (see para. 4 (vii) of the Case Stated); (ii) by expressing in para. 8 the opinion that the prosecution had failed to satisfy them beyond reasonable doubt that the respondent's condition was caused by the insulin he had taken.

In para. 4 of the Case the justices set out these findings. [HIS LORDSHIP stated the facts relating to the medical evidence, and continued:] The Court has considered first the opinion set out in para. 8 (i) of the Case that the cause of the respondent's unfitness to drive had not been established by the prosecution to be injected insulin. Questions of causation have always occupied and intrigued philosophers, but the law leaves them to be determined as matters of fact, subject to the control of such guiding principles as the requirement to distinguish causes which are direct, indirect, antecedent, intervening, sole or complementary. That catalogue is not complete, but serves to illustrate the nature of the search which a jury, justices or a judge sitting alone may have to make for that which they or he are to

decide was the real effective cause of an event. In the instant case, the justices found on competent evidence that the respondent had in his body insulin naturally produced by his body, plus injected insulin, the totality of which had not rendered him unfit to maintain proper control of his car; he was fit to drive until something operated on that state of things and changed it; so long as the hydrocortezone in his body remained at a level sufficient to balance the effect of the insulin which was in his body, there was no such change, but, owing to an improvement in the function of his liver, the cortezone level fell, and this "threw his body out of balance" and produced a hypoglycaemic episode and coma, unheralded by any premonitory symptom.

In the judgment of the court, the justices were entitled on the very special facts of the present case to entertain a reasonable doubt whether the injected insulin was more than a predisposing or historical cause comprised in a situation or state of equilibrium on which the reduction of cortezone operated as the effective cause of the hypoglycaemic episode. The court will uphold the acquittal on the charge under s. 6 on this ground. Accordingly, it is unnecessary to consider whether the finding of automatism, if justified, would constitute a defence.

As regards the second information, the justices, in para. 4 (vii) of the Case Stated, which has to be read with para. 3 (g) to (j), made a finding that the respondent proceeded on a road which was not straight a distance of over five miles "in a state of automatism"; they do not state the definition which they gave to that expression or explain it except by their use in the same sub-paragraph of the expression "he continued to perform the functions of driving, "after a fashion", and by what they had said in para. 4 (v), namely, "The body may continue to do things "it is used to doing but the will ceases to control the "body . . .". Whether or not any given state of evidence in any case provides a foundation for a finding of automatism is a question of law; compare *Bratty v. A.-G. for Northern Ireland*. Such a foundation was laid in this case by the medical evidence, and the justices were, therefore, bound to determine whether the prosecution had excluded automatism beyond reasonable doubt with respect to at least a part of the driving. It is equally a question of law what constitutes a state of automatism. It is salutary to recall that this expression is no more than a modern catchphrase which the courts have not accepted as connoting any wider or looser concept than involuntary movement of the body or limbs of a person. Thus, the question is posed whether the justices' finding that a state of automatism had already supervened when the respondent was first observed in London Road, Hackbridge, was supported by any evidence which, as a matter of law, sufficed at least to raise a reasonable doubt, that is, such a doubt whether it might be true that all of his bodily movements which turned his car hither and thither and kept it moving at a fairly steady speed were wholly uncontrolled and uninitiated by any function of conscious

will. Therefore, the findings of primary fact require close analysis. The finding of a condition which "may be likened to sleep-walking or to a fit of epilepsy" is not a finding that there was a state identical with those states in respect of absence of control by the will; the finding that "the body may continue to do things 'it is used to doing'" is not a finding that everything the respondent's arms, legs, and eyes did throughout those five miles was a thing his body was used to doing; the finding that "he continued 'to perform the functions of driving, after a fashion'", tends to negative rather than support a conclusion that the whole of such performance was involuntary or unconscious. In the judgment of the court, the justices could not have reasonably come to the conclusion stated in para. 4 (vii), which is one reached by inference from the primary facts, had they correctly directed themselves in law. Accordingly, their finding that automatism supervened at the point of time and place there mentioned must be set aside. That finding having thus gone, the remaining findings, set out in para. 4 and in para. 3 of the Case, compel acceptance, without any reasonable doubt, of the conclusion that, during some part of his travel over the relevant five miles, and of that part of the distance where his car was proceeding dangerously, the respondent was driving it.

The charge of dangerous driving was fully established by the facts found unless the evidence failed to exclude beyond reasonable doubt the existence of a state of automatism extending throughout the whole of the distance or stretches of road to which it related. For reasons already stated, the findings of the justices do not support a conclusion that already, before the material time, there had occurred in this case such a complete destruction of voluntary control as could constitute in law automatism. The court will send back this charge of dangerous driving with a direction to convict. It will, of course, be for the justices themselves to decide what sentence they see fit to impose in the very special circumstances of this case.

Order accordingly.

Solicitors: *Solicitor, Metropolitan Police* (for the appellant); *Kingsley, Napley, and Co.* (for the respondent).

[*Reported by N. P. METCALFE, ESQ., Barrister-at-Law.*]