4 KING'S BENCH WALK

THE CHAMBERS OF TIMOTHY RAGGATT QC

Janick Fielding – Barrister

Called 1997

Practice summary – Privately Paid Road Traffic

Profile:

Janick's experience as a heavyweight criminal defence barrister makes him highly sought in defending private road traffic instructions. His keen eye for legal argument and advanced case handling skills ensure that the fee-paying client receives the best service possible.

Whereas some solicitors may take substantial funds and afford the client a junior, inexperienced counsel, those solicitors instructing Janick are the ones ready to go the extra distance for the client, prepare their cases thoroughly together with counsel and bring to bear the same tactics and consideration that would be seen in a murder or armed robbery trial.

Significant private fees are however required. As any competent solicitor will tell you, careful preparation and attention to detail cannot be provided on anything as low as legal aid rates for the majority of such cases. Further, to secure Janick's availability, other lengthier work has invariably to be returned or instruction refused.

Notable Cases:

(Greater detail is given in respect of some road traffic case examples than in other areas of the CV so as to demonstrate the completeness of the preparation engaged in.)

R v Saitch [2018-19] speeding

The defendant was caught by a motorway speed camera at 101mph. She argued that she had been doing no more than 70mph. Her case appeared supported by her father who was travelling in the car immediately behind and had not been caught by the same automated camera.

The Crown sought to rely upon the sufficiency of their own equipment and the possibility that the defendant's father's car might have been obscured by a fortuitously placed HGV. Nonetheless, cousnel deployed a case statement with disclosure list requiring various materials from the Crown which, over the course of subsequent hearings, they erroneously claimed already to have supplied or which they said were

not disclosable. After repeated hearings the Crown eventually conceded the matter and the defendant was acquitted and awarded costs. (Staines Magistrates Court.)

R v Ilgin Williams [2016-17] failing to provide

The defendant was charged having failed to provide a specimen of breath at the road side and then again at the police station. On the latter occasion she had had no fewer than six opportunities, all of which had been recorded on video.

The defence case was that she had just been the victim of a sustained assault at the hands of her boyfriend and had been so traumatised that she had been unable to summon sufficient breath to satisfy the roadside requirements. Thereafter, her trauma had been compounded by her arrest and detention and she had been in such a state that she could not provide the sample as required, even though she had tried her best.

The Crown asserted, without evidence, that there had been no assault upon her, that the same was a convenient excuse to evade liability and that she had failed the tests deliberately because she knew she was over the limit. Officers gave the traditional accounts of slurred speech, glazed eyes and the smell of intoxicating liquor on her breath.

On the advice of counsel, expert reports were obtained from two eminent practitioners; a pathologist and a psychiatrist. The Crown were also pressed in respect of their defective disclosure. The officers, both on the scene and in charge of the investigation were challenged in relation to the observation of their duties and their honesty.

The defence established that there had indeed been a serious assault on the complainant, that her injuries were consistent with multiple recent trauma, that she was mentally shocked by what had occurred, that the same had been compounded by the conduct of the police, that she had subsequently developed post-traumatic stress disorder and that it was most unlikely she would at the material time have been able to comply with the requests for a sample of her breath. It was also established that the officer in charge o the case had lied in relation to the conduct of her investigation. Of particular concern, she had been unable to explain how it was that photographs showing fresh injuries on the defendant's face, taken on her arrival at the police station, had been buried during the original trial and had then surfaced following defence pressure.

The defendant was a lady of hitherto impeccable character, mother of a special needs child and experienced school teacher. She stood to lose a great deal on conviction. She was acquitted following a three day trial. (Snaresbrook Crown Court)

R v Foster-Jones (No.2) [2014-15] failing to provide

Following on from his acquittal for dangerous driving, the CPS decided to prosecute the defendant for his having failed to provide a sample of breath when required to do so at the police station. The defence case was that he had tried as well as he could, but that whatever had gone wrong with the equipment was not his fault.

Relying upon the failures and generally very poor evidence given by the investigating officer in the dangerous driving trial, the defence asserted that either the procedure had been incorrectly handled, the machine was defective or the defendant had in fact passed but the police had covered that up by falsifying the results. There was some support for the final proposition as it was discovered that although there were three printouts showing a failure to provide from the machine into which the defendant had offered his

breath sample, each was an identical copy of the other in all respects, though each bore a different signature, suggesting that a single slip had been photocopied and reused.

Following material non-disclosure, the defence listed the matter for an abuse of process argument or for s.78(1) exclusion of evidence in the alternative. The latter argument succeeded and the defendant was acquitted. (Southend Magistrates)

R v Foster-Jones (No.1) [2014-15] dangerous driving
The defendant had been on his way home in his Ferrari, with his teenage son, having watched a Chelsea FC match one Saturday afternoon. It was alleged that whilst driving through East London, he attracted the attention of a Met van full of officers, a number of whom claimed to have witnessed a catalogue of his very aggressive and dangerous driving over a distance of approximately twenty miles, some of it at high speed and through heavy traffic. The defendant said that they had just made it all up, although a motive was not immediately apparent.

During trial, cross-examination of the police pursuit driver and the investigating officer revealed some startling and largely irreconcilable features. Despite an allegation of dozens of cars having been inconvenienced and some having all but crashed, there had been not a single call of complaint made to the police, there were in fact no civilian witnesses at all. No roadside camera had captured anything and the three cameras on the pursuing van had variously not had their cameras activated or no one had gone to retrieve the footage from their hard drives until such time as it had been auto-erased, this despite the driver having a detailed knowledge of the equipment on her vehicle. The defendant's account, though given in full when he was interviewed in custody was not listened to by the investigating officer before trial and none of the enquiries into evidential leads afforded the police by the defendant were ever looked into. None of the five officers travelling in the rear of the van had been able to see anything because it was asserted that police passengers cannot see out of their windows! Finally, the sequence of events and their timings through the police radio operators did not match the complaint being made by the police in pursuit, such that were the two to have tallied, the defendant's Ferrari would have had to have been travelling in excess of 650mph – faster than the top speed of a Boeing 747 at 35,000ft.

Legal argument excluded evidence of the defendant's consumption of a limited quantity of beer earlier that day and the alleged failed breath test on arrest. The defendant was acquitted. (Basildon Crown Court)

Chacravarty v Norwich Justices [2014] - speeding
Counsel was instructed at a very late stage to argue a case stated appeal against the refusal of the Norwich Magistrates Court to stay a speeding allegation as an abuse of process after repeated delays in serving evidence and their reliance upon contradictory and ambiguous material. The case concerned the failure of the Crown to prosecute effectively and issues over continuity. Administrative Court.

R v Measures [2012-13] - causing death by careless driving
An incredibly difficult case in which a driver overtook a pair of cyclists riding two abreast on a bend in a road by crossing into the oncoming lane. Though there was enough space to pass the two further cyclists riding single file toward her, the second is thought to have ridden into the rear of the first before toppling at right angles into the road. Though the reconstruction experts showed only passing contact was made with the car, the injury sustained was fatal.
A tactically demanding case, the defence relied upon the demonstration of riding and judgement errors of all four cyclists while asserting that notwithstanding the nature and timing of the overtake, the same was not careless.

The case centred upon the accident reconstruction, pathology and the shifting accounts of the three prosecution eye-witnesses. There was also established a degree of rider error by the deceased, who had never before ridden on a road in the UK, and no bicycle for the past three years. The defence also had to contend with the very frank account of the defendant given in her police interview being misinterpreted by the prosecution.
The case was on any view a great tragedy in which a young woman lost her life as a result of an unforeseeable set of circumstances coming together and resulting in an accidental, low-speed collision with a car driven by a doctor taking her young family home from a local excursion.
Counsel also had to contend at short notice with the press mis-reporting key evidence and making other evidence up. The trial was allowed to continue, the jury already being in deliberations overnight, though the Learned Judge deprecated the standard and content of the misleading reporting. Sadly, none of the national press saw fit to print corrections.
(Due to the high profile nature, complexity and unusual tragedy of this case, counsel agreed to accept instruction on legal aid.)
The defendant was acquitted unanimously. (Oxford Crown Court)

R v Lander [2013] - failure to provide a specimen of breath
The defendant and some friends got very drunk. When one of them decided to try to drive home, the defendant remonstrated with her. Nonetheless, she got into her vehicle and proceeded to drive into a post, still in the pub car park. The defendant persuaded her to get out of the driver's seat and sit in the passenger seat, while he occupied the driver's seat to ensure she could not try and drive again. When the police attended the defendant was still in the driver's seat, though with the engine off and the keys in the ignition. He then refused on request to provide a sample of breath and began to be very abusive to the officers. After arrest and carriage to the police station he continued to refuse to provide the required sample and was subsequently charged. In the absence of the officer who had conducted the procedure and a lack of explanation for several troubling entries in the custody record, counsel was able to argue that the Crown should not be permitted rely upon their MGDDA evidence and successfully excluded the same on application. The Crown then conceded. (Croydon Magistrates)

R v Modestu [2012-13] - no insurance
Counsel was instructed to defend a chauffeur accused of having no insurance. His defence was that he had taken out a policy but that the insurers subsequently refused to recognise it. After submissions pre-trial and covert investigations carried out by Instructing Solicitors, the Crown were persuaded to discontinue their proceedings. The case was of particular importance as the defendant, a highly trained chauffeur to a middle eastern royal family, would have lost his job and livelihood. (Wimbledon Magistrates)

R v Hassani [2012] - failure to provide, careless driving, drink driving
The defendant was arrested after collision with a wall on suspicion of driving under the influence. Having made various admissions he failed to provide adequately a sample of breath. Latterly he asserted that he had damaged his chest in the accident and that was the reason for his failure. The defence in respect of the failure to provide the sample succeeded on legal argument pre-trial. The defendant was acquitted on the remainder at appeal. (Basildon Magistrates)

R v Alam [2012] - dangerous use of a vehicle
The defendant was out of the country when alleged to have been driving his convertible car with a three seater sofa across the rear seat. Despite representations made to the magistrates, they refused to adjourn the matter for the defendant's return to the UK, notwithstanding he was a British national. Counsel was

instructed to handle the Crown Court proceedings. Counsel drafted pleadings and skeleton arguments, both in respect of the defence and to recuse a judge who had stepped improperly into the arena. The defendant was awarded his costs on acquittal, the Crown latterly conceding the case. (Guildford Crown)

R v Moulsley [2012] – speeding

The defendant was alleged to have been clocked by a radar gun achieving 66mph in a 30mph zone while undertaking in close proximity to a roundabout. The defence case was that the officers were mistaken as to speed and that the gun must be wrong. Detailed cross-examination of the officers elicited a wholesale departure from accepted procedure and a variance of evidence between two officers who had initially sought to support one another. The damage was such that the evidence of the defendant was preferred over the assertions of the police and the reading of their gun. (Reading Crown)

R v Hayward [2012] – driving under the influence of drugs

Counsel successfully defended a stroke victim with special needs who, due to his inability to perform roadside balance tests after a road traffic accident in the high-security compound where he worked, had been accused of driving under the influence of drugs. A combination of toxicologist, neurologist and psychiatric evidence demonstrated that the requisite level of proof was beyond the means of the Crown to attain and the case was discontinued at trial. Evidence of the officer's failure to adhere to proper procedure was also relied upon. (Witham Magistrates)

R v Uddin [2011] – driving without insurance

The defendant ran a complex defence based in part on covert recordings made of conversation with his insurers, in which they asserted variously that he was in fact insured under various headings, irrespective of the ambiguous wording in his certificate. Counsel also drafted a lengthy advice on CPS charging protocol which succeeded in persuading the Crown that there was no merit in proceedings. The case was discontinued. (Guildford Magistrates)

R v Wilson [2011] - parking in a restricted area

The defendant was charged with traffic offences arising from a belated allegation made by her boyfriend that she had been driving at the relevant time, he having previously been the subject in respect of a failed prosecution arising from the same offence. In what was a curious set of background facts, the defendant's boyfriend having been permitted not to complete the usual form required by the registered keeper of vehicles, but was instead requested to provide the same details required by the form through the medium of a solicitor's letter. This unusual and evidentially questionable approach to this kind of scenario was challenged on the ground that the hearsay within the letter was neither sufficient nor admissible. Questions arose about the status of the same and the compellability of the letter's author, notwithstanding the issue of legal professional privilege that could be asserted if the same were to become the subject of cross-examination.

Defence counsel was instructed to consider the applications that arose, both pre-trial argument and preparation for trial in the event the former were to fail. Included in this was an analysis of the prosecution code of conduct in respect of the Crown's aforementioned professional position, the same being raised not least by the questionable handling and sourcing of the information underpinning the prosecution case. The admissibility of the evidence from the solicitor and analysis of CCTV / still-footage served in respect of the incident were of paramount importance.The Crown, after consideration of the points raised, accepted that their case had no merit and that the evidence sought to be relied upon would not be admissible at trial. Accordingly, they discontinued. (Staines Magistrates)

R v Newton [2011] - failure to provide driver details

The defendant was charged once with failing to provide details in most unfair circumstances, it being clear to the Crown that there had been difficulty with their own service. Of greater complication, the Crown, having inadvertently disclosed the same to the defendant, were reluctant to discontinue, thereby giving rise to a potential abuse of process.

Defence counsel was instructed to consider the applications that arose, both pre-trial argument and preparation for trial in the event the former were to fail. Included in this was an analysis of the prosecution code of conduct in respect of their own professional position.

As the case developed, the Crown accepted from the defence that their position in respect of proof of service may well have become untenable, and so they informed the defendant's Instructing Solicitors that they would discontinue if the defendant were to reveal through his solicitor who the driver had been.

This gave rise to certain professional difficulties for the defence, as the girlfriend of the defendant, who had been the driver, had already approached, though had not retained, the services of Instructing Solicitors in the event that she were identified from the footage available.

Once resolution of the ethical question had been satisfactorily resolved, the Crown were afforded through Instructing Solicitors the details they had sought in lieu of prosecution and the case was discontinued.

This case was of significant importance to the defendant, not only because it was an imputation upon his character, but more importantly because having spent considerable time and money studying for and taking exams in a specialist area, he was in need of his license to pursue those employment positions that would now be open to him. (Staines Magistrates)

R v Wilson [2011] – failing to provide details

Accused allegedly on the word of the defendant's partner, but in the absence of direct evidence, counsel advanced legal submissions on behalf of the defendant successfully demonstrating that there could never be a case to answer. The matter was discontinued before trial. (Staines Magistrates)

R v Sheehan [2010] – driving without due care

The defendant, pursued by several police officers, was said to have driven in excess of 90mph while other vehicles were forced aside. Cross-examination demonstrated that the officers' evidence was inconsistent with both the truth and the laws of physics and the defendant was acquitted at half time. (Chelmsford Magistrates)

R v Evans [2010] – careless driving

The defendant drove his motorcycle into the side of a van at an intersection. Cross-examination by counsel demonstrated conclusively that the fault lay exclusively with the van driver and another vehicle. The case was discontinued even before half time. (Basildon Magistrates)

R v Rattan [2009 – 10] – drink driving

The defendant, a retired professor, had been found unconscious, in a pool of his own blood, on the floor of a property he was having renovated. After receiving some first aid from his builder, his next recollection, several hours later, was of being stopped by the police while driving a high performance BMW that was not his own, with an unknown young Polish blonde in the seat alongside him. He was belligerent towards the officers at the roadside and at the police station and refused all medical treatment. He was three times over the limit. The defence on non – insane automatism succeeded before a district judge through the deployment of lengthy and complex reports arising from the retrospective analysis afforded by an eminent

consultant neurologist. The case also featured extensive cross – examination over the alleged incompetence of the FME and custody sergeant – (Stratford Magistrates)

R v Mills [2009-10] – causing death by careless driving

Counsel was junior to Orlando Pownall QC. The defendant was alleged to have been responsible for a very unusual, slow-speed collision, in which a cyclist had ridden into the rear of his car at a junction. The case featured several abuse of process arguments, stemming from the loss of essential evidence by the police (Beckford) and, far more unusually, by the defendant being left liable to conviction on account of defects in the condition of the vehicle occasioned by the maker and registered dealers (Connelly / Barings). Numerous experts were to have been called, including pathologists and collision investigators. Despite reluctance on the part of the police to disclose key evidence, however, the Crown were finally faced with no option but to concede on the day before trial. – Isleworth Crown Court.

R v Guittierez-Perez [2009] – causing death by dangerous driving

Counsel was instructed specifically for the appeal of this difficult and tragic matter. The Appellant, for whom leave had been secured, had been sentenced to seven years imprisonment. The brief facts were that, after a failed attempt to commit suicide, she had driven her Range Rover while under the influence of drink and drugs until, after several minor accidents and near-misses, she careered into the barrier outside a primary school and crushed an infant in a pushchair to death in front of its mother and very young siblings. The case was concentrated around a substantial retrospective analysis of her psychiatric and psychological condition, something that had not been sought in the lower court, and whether, notwithstanding the chilling nature of the case, the sentence could be said to be manifestly excessive. The Court of Appeal thought it was not. National media interest was high and concern had to be had for the extreme sensitivity of the case. – Court of Appeal.

R v Black [2009] – failure to provide details

Counsel defended a man who had been convicted in absence. Having secured the setting aside of the conviction, counsel demonstrated that the efforts made by the defendant in the completion of the first form sent to him, given his particular circumstances, was sufficient and that he was entitled to ignore further correspondence. Failure of the Crown to accept defence contentions resulted in an abuse of process application being drafted. The Crown conceded the same. (Guildford Magistrates)

R v Wise [2009] – careless driving, failure to stop and failing to report

Essentially a bump and shunt in a car park, the defendant found herself facing allegations from two witnesses that were untrue. Previous counsel had advised her she had no defence and she had pleaded. Counsel reopened all pleas and subsequently had the case stayed as an abuse of process due to incompetent handling of evidence at trial by the CPS. (Guildford Magistrates)

R v Clemaron [2009] – careless driving

The defendant was said to have driven at speed through red lights. Subsequently he suffered serious head injuries in a separate road traffic incident for which he was not to blame. Complex and detailed psychiatric and other medical evidence demonstrated that his cognitive function would present insurmountable difficulties in standing trial for the earlier incident and time would not resolve the issues. The case was discontinued. (Guildford Magistrates)

R v Reading-Macleod [2009] – speeding
Counsel reopened one of two convictions in absence for speeding and persuaded the Crown to discontinue after demonstrating inexplicable inconsistency of key evidence they relied upon. (Banbury Magistrates)

R v DaCosta [2008] – careless driving and common assault
Counsel defended the manager of a bank in what was essentially a serious domestic dispute, fuelled by protracted divorce proceedings, between husband and wife. The defendant was alleged to have used the car as a weapon. Counsel cross-examined both the very difficult wife and the couple's son, a similarly hostile witness. The Crown also had three further eye witnesses. The defendant stood alone. Counsel secured an acquittal on both charges. (Canterbury Magistrates)

R v Coombes [2008] – drink driving
The defendant was charged with drink driving after outrunning a taxi and colliding with a wall. Having returned home he was challenged by the police who had followed the trail of damage and leaked fluids to his door. On being confronted he fully admitted the offence and provided samples confirming the same. Counsel secured an acquittal having argued successfully for the exclusion of confession evidence and matters flowing there from due to substantial PACE breaches. (Chelmsford Magistrates)

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