

Neutral Citation no. [2005] NIMag 2

Ref: **Mag31**

Judgment: approved by the Court for handing down
(*subject to editorial corrections*)

Delivered: **28/04/05**

In the Petty Sessions District of Craigavon

H Orde
Chief Constable

Complainant

Andrew John McLean

Defendant

Judgment of A.T.G. White R.M.

[1] The defendant is prosecuted for four offences namely: -

1. Driving a mechanically propelled vehicle without lawful authority or reasonable excuse on land to which the public has, or is permitted to have, access, contrary to Article 48 of the Road Traffic (NI) Order 1981
2. Driving a mechanically propelled vehicle without due care and attention contrary to Article 12 of the Road Traffic (NI) Order 1995
3. Failing to report an accident in which a mechanically propelled vehicle had been involved, contrary to Article 175 of the Road Traffic (NI) Order 1981
4. Driving a motor vehicle without insurance, contrary to Article 90 of the Road Traffic (NI) Order 1981

[2] The Defendant has taken issue as to whether the vehicle he was driving on the day in question was a motor vehicle. He concedes that it was a mechanically propelled vehicle and has pleaded guilty to the first three offences listed above and this judgment therefore relates only to offence 4, and to the issue of whether the vehicle in question was a motor vehicle.

[3] The facts can be simply stated. On 15 May 2004, at about 6.30pm, Miss Clare Dawson, then aged 11, drove her quadricycle from her home, down the street, to a local football pitch, namely the Churchill Place football pitch in Waringstown. There were about fifteen people on or around the pitch at the time. There is a dispute as to whether some or all were playing football or building a bonfire, which is of no consequence to the present issue. At some stage, the defendant, who had just turned 18, borrowed or took the quadricycle from Miss Dawson and drove it on the football pitch. In the course of driving it, he collided with William David Clarke, aged 11, injuring William's leg.

[4] A motor vehicle is defined in Article 2(2) of the Road Traffic (NI) Order 1981 as follows: -

“motor vehicle means a mechanically propelled vehicle (not being a tramcar or other vehicle running on permanent rails, or a trolley vehicle) which is intended or adapted for use on the road”

[5] This definition has been considered in a series of cases including in particular *Burns v Currell* [1960] 2 All E.R. 297, *Chief Constable of North Yorkshire Police v Saddington* [2001] R.T.R. 227, and in this jurisdiction, *Symington v Master* [1985] N.I. 293 and *McMaster v Austin* [1988] N.I. 448.

[6] The question I must ask myself, set out by Lord Parker LCJ in *Burns v Currell* and approved by Lord Hutton LCJ in *McMaster v Austin* is:- am I satisfied beyond reasonable doubt on the evidence in this case that a reasonable person looking at the vehicle would say that one of its uses would be a road user?

[7] The first point to note is that the words ‘on the evidence in this case’ are themselves open to interpretation. In *Burns v Currell*, Lord Parker LCJ made it clear that the bench would have been entitled to use their own experience and knowledge ‘up to a point’. In *DPP v Saddington*, Pill LJ took judicial notice of the fact that considerable numbers of Go-ped scooters (the vehicle in question in that case) were in circulation, and said he would expect justices to do the same. I consider that I am entitled to use my own experience and knowledge in this case.

[8] I am conscious of the fact that the evidence before me does not contain the sort of technical evidence about the size and capacity of the vehicle that was before the court in some of the other cases to which I have referred, and that I must decide the case on the evidence, subject as I have said, to proper use of my own knowledge and experience.

[9] The quadricycle in question was photographed by police, and the photographs were before the court. The photographer describes the vehicle as a ‘RAM 100’ which I conclude, from both my own knowledge and from the photographs, and from material provided by the prosecution, means that it has an engine capacity of 100cc. It appears from the photographs to be a smallish vehicle, which accords with the fact that it was owned by an 11 year old girl, but it is clear both from the photographs and the evidence that it was big enough to be driven by an 18 year old man.

[10] In addition, a police officer examined the vehicle. She noted a number of matters many of which can be seen in the photographs. The vehicle has two clear spotlights at the front and a red light at the rear. At the front of the bike there are two springs in the middle, one attached to each wheel. At the rear there is a spring underneath the seat. There are brakes on the handlebars.

[11] While I have not been provided with evidence about the maximum speed the vehicle is capable of, I can use my own knowledge and experience to conclude that a 100cc vehicle of this type is capable of a speed well in excess of normal running speed.

[12] Turning to quadricycles generally, it is clear that they can be motor vehicles. By virtue of Article 3(1) of the 1981 Order, it is an offence for a person to drive on a road a motor vehicle of any class if he is not the holder of a licence authorising him to drive a motor vehicle of that class. Class B1 is made up of 'motor tricycles/quadricycles with a design speed exceeding 50 km per hour and up to 550kg unladen'.

[13] In addition, there is a Motorcycle Single Vehicle Approval Scheme for vehicles including light quadricycles and heavy quadricycles, not type approved to European Standards. The main purpose of the scheme is to ensure that the vehicles have been designed and constructed to modern safety and environmental standards before they can be used on public roads.

[14] There are quadricycles being used on Northern Ireland roads, including by the PSNI which are fully compliant with road traffic laws, and the drivers of which are properly licensed and insured.

[15] Now it is clear that the quadricycle in this case is not so compliant and it is the defendant's case that this quadricycle is so designed and manufactured that it cannot be regarded as a motor vehicle. It is apparent for example that it has no horn, mirrors or indicators.

[16] The absence of horns, mirrors or indicators, or other items necessary to make the vehicle roadworthy, is not conclusive in determining whether the vehicle is a motor vehicle. In *Saddington*, the Go-ped in question had no efficient braking system, no pneumatic tyres, no clutch, lights or mirrors and inadequate steering. It needed to be push started. Pill LJ did not accept the justices' apparent view that the roadworthiness of the vehicle was decisive on the issue of whether its use on the road must be contemplated. He found it to be a motor vehicle.

[17] I note also that the Go-ped was a low powered vehicle with only a 22.5cc two stroke engine with a maximum speed of between 10 and 20 miles an hour on a flat surface. The manufacturers had specifically stated in their literature that it was not intended for operation on public streets, roads and pathways. None of these facts altered the final decision of the court.

[18] I now turn to my own experience and knowledge. In the course of my time on the bench, particularly over the past two years, I have had a number of cases before me involving the use of quadricycles on public roads. It has been apparent to me that a number of these vehicles were, like the vehicle in this case, not designed or equipped for safe use on public roads, but used they were.

[19] In addition, there has been widespread publicity in Northern Ireland about the inappropriate use of quadricycles on public roads, particularly by young people. While it may be that some of these vehicles were equipped with all the necessary safety features of motor vehicles, it is clear to me that many were not.

[20] I take account of the fact that there is no evidence that the defendant used this vehicle on more than this occasion or anywhere other than on the football pitch. I accept that Lord Parker took similar facts into account in *Burns v Currell*, in

determining that the motorised Go-Kart in that case was not a motor vehicle. However, he also noted that there was no evidence in that case that other people used Go-Karts on the road. Further, as I have already stated, while he said that the Justices would have been entitled to use their own experience and knowledge about use of such vehicles on the road, they had not done so, which clearly suggested to him that they had no such knowledge or experience.

[21] Likewise, while I have considered the judgment of Lord Lowry LCJ in *Symington v McMaster*, in which he decided that a 'fun bike' was not a motor vehicle, I agree with the view of Lord Hutton in *McMaster v Austin* that that was a case decided on its own facts. It is apparent from Lord Lowry's judgment that there was no evidence before the court, or no matters within the courts information and experience, about any general use of fun trikes on the road at that time.

[22] I take account of the fact that, unlike in *Saddington*, this is a case in which some place other than a road is the obvious place of use. This vehicle is clearly suitable for use off-road, on rough and uneven ground where mirrors, indicators etc are unnecessary. That is not conclusive, as can be seen from the cases concerning motorcycles used for scrambling, discussed in *Wilkinson* 21st Edition at para 1.38. It is stated there that convictions have ensued as a result of the actual use and the understandable inference that the intended use is there. It is further stated that courts seem to take the view that, despite the differences, the vehicles are sufficiently close to an ordinary motorcycle for them to be regarded as adapted for use on roads. In my view, the analogy between scrambler bikes and ordinary motorbikes is akin to the analogy between the quadricycle in this case and quadricycles fully equipped for use on roads.

[23] The quadricycle in this case had brakes, two front lights and springs. It had been driven up the street to the football pitches by its young owner. It was capable of sufficient speed to knock down and injure William Clarke. It is of a general type, which, from my knowledge and experience, is used on many occasions on roads of Northern Ireland. As the court stated in *Saddington*, surrender to the temptation to use it on roads will not be an isolated occurrence, even though the vehicle is not roadworthy.

[24] I am satisfied beyond reasonable doubt that a reasonable man, with knowledge of the matters I have set out, would say that one of the uses of that quadricycle would be a road user. I therefore hold that it is a motor vehicle.