

Petterson Trial Day 6

Video of drive through one year later shown again. **Defence** warned against giving too much weight to drive through evidence as it was impossible to replicate conditions. Jury should be warned not to make too much of it; they should be directed to concentrate on defendant's behaviour. **Judge** ruled that a second video of drive through could be shown despite an objection from defence that it contained no new evidence.

Defence Witness Clive Jones Has used the road for 25 years as cyclist, moped rider and car driver. Clear and sunny, normal traffic; as passing Paynes Rd slip road, sun was "blinding", slowed down.

Defence: Could you see anything off to left? **Witness:** No, it was a "white out"; made out brake lights of vehicles ahead, thought something had happened then saw person in road on left. Not aware it was a cyclist' hadn't seen one prior to this; was keeping a proper look out. Had previously cycled on Mountbatten Way regularly but stopped as thought the road was too dangerous for cyclists. Last cycled on Mountbatten Way in April 2012. Always wears high-vis and helmet but rucksack is not high-vis. Was not wearing high-vis over motorcycle gear. Just before brow of hill sun glare was particularly strong; only lasted a few seconds.

Jury questions: several questions concerning David's injuries in relation to the Transit wing mirror and the pressure required to cause a wing mirror to be snapped back **Judge:** Not possible to determine the pressure on the wing mirror caused by hitting David.

Points of law: Prosecution and Defence agreed that Mr Petterson's previous conviction (18 yrs ago) should be ignored. Expert evidence was discussed. **Judge:** jury must be applying physical facts but could also consider expectations; is there an expectation that there wouldn't be a cyclist on Mountbatten Way? Jury will be directed to ignore Highway Code "slow down or stop if dazzled" as Mr Petterson may not have done this but Highway Code is not law. Causation and contributory factor are different.

Discussion between Judge, Prosecution and Defence as to whether prosecution case was i) competent driver should have seen cyclist or ii) should have seen lateral movement of cars ahead and recognised this as indicating a hazard. **Judge:** prosecution case is not this narrowly defined.

Prosecution summing up: Allegation is a simple one of careless driving. Many circumstances cause loss of attention to road: internal or external distractions, being worried or stressed, not concentrating on what's ahead. This case is different because, tragically, David Irving died. No moral issue involved; simply a misjudgement or mistake but *this is not a defence against criminal culpability*. You must consider whether defendant's driving fell below the required standard and did this play a part in David Irving's death. Has defendant fallen below the standard expected? Much agreement on evidence: 17 secs between Waterhouse Lane and collision site; speed unknown; Transit may have had opportunities to observe lateral movements of vehicles ahead; Mr Petterson in Lane 1 did not see David Irving; R handlebar hit between bonnet and A frame, then wing mirror; David dead within 20 mins. No doubt that David was knocked off bike by Mr Petterson's wing mirror; he suffered severe head injuries and severe lacerations parallel to chin on R side of face. Killed by the Mercedes but relevant aspect of the evidence is that he was knocked off. You must consider whether Mr Petterson's driving fell below that expected of a careful and competent driver. Everyone else saw him; Bowles, Mullin and Parker all overtook David Irving, pulling out and moving back. Although these movements must have been within his vision Mr Petterson knocked David Irving off his bike. David was wearing high-vis and anklebands but Mr Petterson failed to see any of this despite good driving

position in Transit. When dazzled by oncoming vehicles you look to bottom left of windscreen, leave space, take appropriate action. No other witnesses said “I couldn’t see”. Mr Petterson had a lot on his mind, was late, visibility restricted by condensation. Prosecution submission is that for a combination of reasons Mr Petterson’s driving fell below the standard of a competent driver and a person was killed

Defence summing up: Burden of proving case on prosecution. Not “probable”, you must be sure. Many things we don’t know; you must be careful judging without full evidence. Mr Taylor (prosecution barrister) has glossed over some of the difficulties of prosecution case. This was an *unavoidable accident*. You should not speculate about unknown factors. Cars change lanes frequently; if sensible you get into lane early but you don’t interpret a vehicle ahead changing lane as a hazard. Mr Fairburn (closest to Mr Petterson) and other witnesses did not see cyclist. Mr Petterson not speeding, honest in answers, sun was a problem. First 999 call 8.47 am; Mr Fairburn doesn’t move out of lane, doesn’t see vehicles ahead move out; lateral movement evidence not helpful. Mr Wilson’s evidence that Mr Petterson had opportunities to see lateral movements ahead – would you interpret this as hazard ahead or normal for this road? Lateral movement to right less obvious as road turns to right. Mr Fairburn did not see a cyclist; cyclist may have been well over the brow of the hill; he said cyclists were rare on this road. A sensible prudent cyclist uses the cycle path. Width of lanes allows vehicles to overtake without changing lanes. Mr Petterson stops at first possible place; would not be sensible to walk back along busy carriageway. Circumstances around forward movement of cyclist complex; Mr Petterson did not have better view in Transit; David’s head not in contact with wing mirror; not known why cyclist wobbled, another unknown factor. Mr Petterson clipped handlebar but alignment of sun would have made it virtually impossible to see David Irving at point of impact. Rubber has come off bike; minimal contact with van. High-vis does not necessarily increase visibility; rucksack in middle of back. Mr Petterson rings police; did not see or cause impact. Two important points: Mr Petterson would not have seen lateral movements of vehicles ahead if they were over crest of hill; glare from sun made it impossible to see cyclist as he blended with background. You cannot be sure Mr Petterson saw lateral movements ahead; if he did it could have been for any reason. Prosecution have not proved the case. It was a tragic accident; do not turn a tragedy for David Irving into a tragedy for Mr Petterson. Can you say, hand on heart, that as a careful, considerate driver you would have seen David Irving?

Judge summary, directions and assistance

Directions about law as it applies to this case: Judge emphasised that prosecution has to prove that Mr Petterson was driving on Mountbatten Way without due care and attention and thereby caused the death of David Irving. He explained the precise meanings of “without due care and attention” and “thereby causing the death of David Irving”; Highway Code guidance regarding sun glare (not law but could be used as evidence of without due care and attention, or could be ignored). Directions given about use of expert witnesses’ evidence. Advised jurors that they were only concerned with a fair assessment of evidence and must not let the fact that David died influence their conclusions; they should assess the reliability of witnesses and the accuracy of their evidence.

Judge gave a summary of the evidence.

Jury not sent out as late in the day; they would retire the following day.