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SUPREME COURT OF SOUTH AUSTRALIA

FIRTH v PRESTWOOD

Johnston J

25 February, 11 March 1987 — (1986) 44 SASR 427

MOTOR TRAFFIC – SPEED DANGEROUS – OPEN HIGHWAY – MAXIMUM SPEED 110KM/H – TRAVELLING AT 169KM/H – WHETHER DRIVING AT A DANGEROUS SPEED.

1. In order to prove that a motorist drove at a speed dangerous to the public, it must first be shown that the driving created a wholly unreasonable and unwarranted danger to the life, or limb, or both, of other road users.
***Pope v Hall* (1982) 30 SASR 78, applied.**

2. Where a motorist was intercepted whilst driving his wife and child on a sealed highway at a speed of 169km/h in a 110km/h zone, (2 lanes either way with no access roads, made footpaths nor houses in the vicinity but other vehicles travelling in the same direction) it was open to the Magistrate to conclude that travelling at such speed increased the incidence of risk and the likely consequences of any untoward event to an extent which was unreasonable and unwarranted and accordingly to find that such driving constituted a danger to the public.

JOHNSTON J: *[After setting out the facts, the Magistrate's reasons for judgment and argument on appeal, His Honour continued]:* **[431]** Mr Mayne, who appeared for the respondent, points out that there are some features of some significance besides the actual speed itself. The defendant had just before passing over the digitector been driving on a slight incline; that he was driving in the lane nearest to the centre of the road, that is nearest to traffic moving in the opposite direction; and that there was in fact a vehicle in front of the defendant's vehicle which, although quite some distance away in terms of metres, was not so very far removed from the defendant's vehicle, given the speed at which the defendant's vehicle was travelling, and which could be very rapidly overtaken by the defendant's vehicle if the vehicle in front were to reduce speed or even for some reason to slow right down or stop on that portion of the road.

In *Pope v Hall* (1982) 30 SASR 78 which has come to be regarded as a leading case in this Court on this section, Wells J said (at 79):

> **[432]** "It is now well settled that if driving in a manner, or (where appropriate) at a speed, which was dangerous to the public is to be proved, it must be demonstrated that, in all the circumstances, the impeached driving passed beyond the point where it represented a mere departure – and nothing more serious – from the rules of the ordinary highway code, and became so serious a departure from those rules that the manner or speed of the driving (as the case may be) created a wholly unreasonable and unwarranted danger to the life, or limb, or both, of other road users. To speak of the degree of danger created by any given act or course of conduct comprehends, in my opinion, two factors: the degree of risk that, if something untoward does happen, the damage caused will be more, rather than less, serious. If one were directing a jury one would say: Ask yourselves how likely it was, in the circumstances, that an accident of some sort would occur, and, at the same time, assuming that an accident did occur, how serious it would be; it will be by weighing both those factors together that you will be able to determine the degree of risk created by the situation – in other words, how dangerous the defendant's driving was."

In my opinion, there was danger associated with the defendant's driving, given the nature of the location in which he was driving. His very speed reduced his power to make accurate observation of what was going on about; in a practical way, he himself thought for a moment that an accident had occurred, whereas in fact what had happened was that the police officers had stopped an earlier vehicle travelling in the same direction as the defendant. Driving at that speed could easily give rise to a situation of acute danger to others if for some reason the defendant himself was temporarily less able to control the vehicle than he normally would be, by some fainting turn, a coughing fit, or some small event of that sort. A vehicle that stopped on the side of the

road, perhaps because it had been called on to stop by the police unit, would eventually make its way back in the stream of traffic. The driver might look and observe an oncoming car but the driver would not assume or be able to discern that the vehicle further back along the road was travelling at 169 kilometres per hour. The fact that none of these events occurred is not to the point. What is to the point is the risk. Another risk is a problem arising from a blow-out. It may of course be said that some of these risks attend an act of driving at 110 kilometres per hour, and so they do; but the risk is not an unreasonable and unwarranted risk in the ordinary circumstances of this road, because society says that that is the speed which in ordinary circumstances can be reached on this sort of stretch or road. To travel at a speed greatly above the maximum is to increase the incidence of risk and to increase the likely consequences of any untoward event to an extent which is unreasonable and unwarranted.

In my view, the magistrate was perfectly correct in finding that this driving constituted a danger to the public. The "public" in the relevant sense is any persons using the highway at that time and included, in the particular instance, the police officers who were attending to their equipment at the side of the road, the defendant's wife and child who were with him in the **[433]** car, and other road users including more particularly the vehicle in front of him and such vehicles as were travelling in the opposite direction.

I pause to mention that Mr Mayne correctly put to me that the speed at which the defendant was travelling was such as to put it very likely beyond his power to deal with a situation arising not from anything done by him but from a vehicle travelling in the opposite direction encroaching onto its wrong side of the road. The appeal against the finding of guilt fails.

[His Honour then dealt with the appeal against sentence.]
