

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES & GALLOWAY AT
HAMILTON

[2021] SC HAM 55

JUDGMENT OF SHERIFF MUNGO BOVEY QC

in the COMPLAINT

of the PROCURATOR FISCAL

against

GORDON MAULE

For the Crown: Carey; PFD

For the accused: Tiemey

8 November 2021

[1] Gordon Maule is charged that

(1) on 5 December 2019 on a road or other public place, namely Glasgow Road, Uddingston, he caused serious injury to Andrew McClure by driving a mechanically propelled vehicle namely motor car transporter registered number SJ12 XTC dangerously and failed to properly secure five motor vehicles being carried on said transporter; travel when it was not safe to do so with insecure motor vehicles on board; cause a motor vehicle there with registered number SG53 OGO to fully detach from said transporter; fail to observe that the rear wheels of said motor vehicle had made contact with the road; cause said motor vehicle to travel on to the road and strike a pedestrian standing there namely said Andrew McClure, to his serious injury; CONTRARY to the Road Traffic Act 1988, Section 1A

(2) on 5 December 2019 on a road, namely Glasgow Road, Uddingston, he used a motor vehicle or trailer, namely motor car transporter registered number SJ12 XTC when the weight, position or distribution of its load, or the manner in which the load was secured was such that the use of the said vehicle involved a danger of injury to any person in respect that he failed to properly secure five

motor vehicles being carried on said transporter; travel when it was not safe to do so with insecure motor vehicles on board; cause a motor vehicle there with registered number SG53 OGO to fully detach from said transporter; fail to observe that the rear wheels of said motor vehicle had made contact with the road; cause said motor vehicle to travel on to the road and strike a pedestrian standing there namely said Andrew McClure, to his serious injury; CONTRARY to the Road Traffic Act 1988, Section 40A(d).

[2] These charges were tried before me on 7 and 29 September 2021. Ms Carey PFD appeared for the Crown. Mr Tierney appeared with Mr Maule. I heard evidence from five Crown witnesses. The defence led no evidence.

[3] At an early stage, the Crown made it clear that it regards the charges as alternatives and I have proceeded accordingly. References to *the Act* in this judgment are to the Road Traffic Act 1988 as amended.

A The evidence

[4] **Mr McClure's** evidence was largely covered by a joint minute agreed between the parties and he was not cross-examined. He said that on the day in question he was working as a driver delivering shopping for Sainsbury's supermarket. He was driving a 3.5 ton Mercedes van which he had parked about 5.30pm in Glasgow Road, Uddingston. He was standing unloading boxes at the back of the van. He heard a car horn sounding but didn't pay much attention. He saw a car undertaking and thought *What's this idiot doing?* Because of where he ended up, he thought he had tried to jump out of the way.

[5] After the impact he heard a sound and realised it was him wailing with the pain. He saw the vehicle and, because it was empty, assumed that the driver must have been hurt. He dialled 999 but didn't know what to say. A nurse had appeared at the back of

the van and gone to the driver of the transporter. The driver helped him pull himself into the van. The nurse asked if he was normally pale which he isn't. The police arrived and gave him a foil blanket as he was getting shaky.

[6] **Heather Gourlay** (55) is a qualified nurse. On the day in question she drove behind a car transporter on Glasgow Road for 4 to 5 minutes. She noticed that the last car on the lower deck, a Jeep, was bouncing. It dropped back and its back two wheels went on to the ground. She thought *I hope it doesn't fall off*. She started to peep her horn and flash her lights to catch attention. After the transporter had passed through a second roundabout, the Jeep dropped down and veered off to the left. She saw the Jeep impact with a Sainsbury's van and pulled in. There was no-one driving the Jeep. The ladder at the back of the van was crushed and the driver was on his back, crying out. Another car pulled in behind her and the witness set back off in pursuit of the transporter. She continued to follow the transporter and to sound her horn and flash her lights. Conditions were really wet, dark and stormy. After about three to four hundred yards, the transporter stopped and she shouted to the driver that he had lost a vehicle and hit a pedestrian. He said *I didn't hear you and didn't see you*. She identified the accused as the driver. He looked panicked and genuinely surprised that she had been trying to get his attention. Miss Gourlay did a U-turn and drove back. The driver had a fractured femur bone sticking through his trousers. The driver of the transporter sprinted back before she got there. He was crying as he helped her move the driver into the van.

[7] **John Gorman** (44) has worked for a car-transport company for seventeen years. On 5 December 2019 he had been a director of Glasgow Car Movers for about five years. Of their thirty employees, 25 were drivers. He had spent five years as a car-transporter driver. He was an expert in the field *as much as I can be*.

[8] Mr Maule had been with that business for about four years as a car-transporter driver. As such, his duties were checking and loading cars and driving the truck. When first employed he had training from their dedicated trainer. He was shown how to load and unload cars and how to put them on in the correct order. There were no formal accreditation courses. They did not have refresher courses.

[9] The minimum requirement for securing a vehicle on the transporter was three straps which went over the largest part of the wheel on top of the tread before being ratcheted tight. The strap was hooked and then ratcheted to create a tension as tight as it could be got. This was all that a driver could do. The responsibility for loading and securing cars lay with the driver. It was his duty to check the straps every day. This would be for rips or tears or anything that makes them look weak. The transport teams were given an electronic check list which included changing straps. There were no issues flagged up on the day in question.

[10] On 5 December 2019, Mr Maule phoned the witness after the incident in Glasgow Road and he went straight there, arriving in about ten minutes. On arrival he saw that a blue Jeep Cherokee had come off the back of the truck. The transporter had been collecting cars going to auction from Glasgow to their base in Uddingston. When he

arrived, it was very windy and the rain was very heavy. He thought that it had been the day's weather.

[11] There were no other kinds of straps available; the ones in use on the day were the industry standard as was the method of securing. This was a freak accident, the first one of which he was aware in his twenty years in the industry. As regards the capabilities of the straps, there were circumstances in which it was known that their ability to keep vehicles on the transporter could be compromised, namely when they got wet. Straps did come loose from time to time; if they got really wet, they could expand a bit. Straps could be less tense when wet. They could expand slightly and lose their ability to grip. He was aware of straps breaking on occasion. It was uncommon but not unheard-of. A Jeep Cherokee was more likely to come loose in wet conditions because of its higher suspension which made it more likely to rock with vehicle movement.

[12] He had inspected the transporter at the locus. The Jeep Cherokee was an old model in poor condition. It would have weighed about three tons. He looked at the empty space where the Jeep had been on the transporter. There were three straps, two looped and one broken. The looped ones were at the rear of the Jeep, closest to the back of the transporter. The broken one was at the driver's wheel. If the straps on the rear wheels came off in the wet, the remaining strap would be under too much pressure and likely to break under the strain.

[13] He agreed with Mr Tierney that if the driver had fastened the strap sufficiently tight, there was nothing else he could do to increase the ability of the straps to keep the Jeep in place. His inspection supported this view though, of course, he hadn't been there

when the vehicles were loaded. He believed that Mr Maule had done all he could. The accused was still employed with them.

[14] **Lesley Fraser** was driving home from work on the afternoon in question. When stopped waiting to go into a roundabout on Old Glasgow Road, Uddingston, she saw a car transporter two vehicles ahead. One of the cars had become dislodged and its rear wheels were sitting on the road. She tried to alert the driver by sounding her horn and flashing her lights. She could hear another horn sounding but couldn't say from where. When the transporter entered the roundabout, Mrs Fraser tried to keep back, anticipating that it might come off, as did the other car following. After the transporter left the roundabout, the car came off the back and then travelled forward. It veered to the side of the road and hit a Sainsbury van and a person. Mrs Fraser stopped her car and found the man with the van pretty shocked. He was lying half in his van and in a lot of pain, asking for help.

[15] **PC Graham Neilson** (52) has twenty years' police service. He spent thirteen years in road policing and was so deployed on the day in question. By way of training he attended courses for light and heavy goods vehicle examination. He is an HGV prohibition-trained officer in which capacity he dealt with car transporters. He had also attended road officer patrol courses dealing with all aspects of crash investigation.

[16] On 5 December 2019 he attended the locus about 7.30pm and found a vehicle detached from a car transporter. This was a White DAF two-axle rigid vehicle registration SJ12 XTC with vehicles on two levels. There were three on the upper level and one remaining on the lower level.

[17] Mr Tierney objected to PC Neilson giving evidence of the condition of straps and the manner in which the vehicle was secured to the transporter. This was on the basis that it was not clear that his experience extended to the loading of a car transporter. The Crown then led from the witness that his experience included MOT and roadworthiness, particularly the checking of loads and their security. I allowed the evidence under reservation.

[18] The witness spoke to a number of photographs taken by a colleague (Crown Label 1). These included the vehicles remaining on the transporter. Where the strap was round the circumference of the wheel, he expressed the view that the wheel looked secure or was secured properly. The minimum number of points for security was three and none of the vehicles had three. Three straps remained where the wheels of the Jeep that fell off the transporter had been. The Jeep had been front-end on the trailer, its rear being the last part of the loading of the transporter.

[19] Of the straps that would have been on the Jeep, the two nearest the back of the transporter were sheared and while there was one further up still intact. This was the first accident such as this that he had seen in his thirteen years in the department. He had never come across a strap coming off wheels before.

[20] Cross-examined, the witness said he had spent ten years in the road haulage industry before joining the police. He had never driven a car transporter and had no experience of securing loads to them. He agreed that there were cradles on the transporter in which to hold the wheels. As to whether a point of contact needn't be a strap, Mr Neilson said he would strap them and that it was a requirement. Three points

of contact was in the transport manual issued under the Transport Regulations Act. It was a rule rather than a guideline. He agreed that wet (though not windy) weather would increase the chance of a strap slipping off. A car with a high suspension was more prone to moving. The Jeep appeared to have had three straps in place. Coming off could be a gradual process which a driver would be less likely to notice.

[21] During Mr Neilson's evidence, Mr Tierney objected that by showing the photographs to him without any earlier questioning the PFD was leading him. I repelled this objection on the basis that the photographs were not self-explanatory or detailed in the joint minute; the Crown required to put them to someone who could explain what they showed and the element of leading was slight.

[22] As regards the objection to Mr Neilson's expertise, I am satisfied that he had sufficient experience to express the views on which I have relied.

B No case to answer

[23] Mr Tierney made a submission of no case to answer.

[24] Section 1A provides that a person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road is guilty of an offence.

In this section "*serious injury*" means severe physical injury.

[25] Section 2A gives guidance as to the meaning of dangerous driving:

"(1) For the purposes of sections 1, 1A and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if) —
(a) the way he drives falls far below what would be expected of a competent and careful driver, and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 1, 1A and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above '*dangerous*' refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) above the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried."

[26] The driving in this case arises from the condition of the transporter. The relevant provision is therefore section 2A(2) in terms of which a person is to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

[27] Subsection (4) provides that in determining the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

[28] Finally, subsection (3) provides that in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

[29] Thus there are four questions to address:

(1) Was the transporter in a dangerous state by reason of anything attached to or carried on it or the manner of attachment or carriage?

- (2) If it was, should it have been obvious to the accused as a competent and careful driver that driving the vehicle in its then state would be dangerous either because of circumstances of which he could be expected to be aware or circumstances shown to have been within his knowledge?
- (3) If so, did the accused by driving in these circumstances cause serious injury to Andrew McClure?
- (4) If so, did the driving of the accused fall far below what would be expected of a competent and careful driver?

[30] In *R. v Roberts (David) & George*¹ Mr George was driving a tipper lorry owned and operated by Roberts as part of his haulage business when the rear near side wheel became detached. It bounced over the central reservation and collided with a motor car, as a result of which the driver sustained head injuries and was killed instantly. The appellants were charged with causing death by dangerous driving contrary to section 1 of the Act. The prosecution case was that the wheel would not have come loose had the proper checks been carried out, that the dangerous state of the lorry was caused by a lack of proper maintenance resulting from the absence of any adequate system, and that the danger was, or should have been, obvious to both men.

[31] Allowing the appeals, the Court of Appeal in England held that a driver was not guilty of an offence under sections 1 and 2A(2) unless it was, or should have been obvious in the sense that it could have been seen or realised at first glance, evident to

1 [1997] RTR462

him, if he was being careful and competent, that it was dangerous to drive the vehicle in its current state and that an employed driver was not to be expected to do more by way of inspection than he was instructed to do, unless he should have appreciated that his instructions were inadequate.

[32] Against that background, I answer the questions I have set out, at this stage taking the Crown case at its highest:

(1) **The transporter was in a dangerous state by reason the manner of attachment of the Jeep Cherokee carried on it.**

[33] PC Neilson and Mr Gorman spoke to the requirement for three points of contact for each vehicle. Although they disagree as to the condition of the straps remaining in the place where the Jeep had been, both spoke to signs indicating that it had had three straps securing it. As regards causation Mr Gorman and PC Neilson agreed that wet weather would increase the chance of a strap slipping off. All were agreed that conditions were wet. A car with a high suspension such as the Jeep was more prone to moving.

[34] I conclude that the evidence permits the conclusion that in the wet conditions prevailing, there was a danger from the loading of the transporter by reason of the use of straps which had a propensity to expand and become loose in such conditions.

(2) **It should have been obvious to the accused as a competent and careful driver that driving the transporter in its then state would be dangerous because of circumstances of which he could be expected to be aware.**

[35] It is clear that the Court is required to come to a view as to what the accused should have been aware of. In *Director of Public Prosecutions v D²* the accused had placed a sign on a road. Several motorists had safely negotiated past it but it had played a part in a fatal accident. Applying the same provision in assistance of the interpretation of the word "dangerous" (at paragraph 17) a Divisional Court observed:

“The reasonable person does not expect, and cannot be taken to expect, that all motorists will drive carefully and well. The reasonable person is aware, sadly, that many motorists do not. The reasonable person should, in my judgment, realise that an obstruction of this sort could play a part in causing an accident, notwithstanding that the primary cause of such accident would be bad driving on the part of a motorist, whether in the form of excessive speed or failure to keep a proper lookout or following other traffic too closely or a combination of such factors.”

[36] Similarly, in my view, the danger posed by loose straps of a vehicle falling off the transporter is one that a reasonable person should realise.

[37] The issue then is whether the evidence supports the inference that the accused should have been aware of the propensity of straps to expand and become loose in wet weather, given that this is not a circumstance actually shown to have been within his knowledge.

[38] As we have seen, carrying vehicles on a transporter such as was involved in this case is potentially a very hazardous activity.

[39] Uncontested evidence from his employer indicates that, as driver, the accused was responsible for the loading and securing of the motor vehicles on his transporter. It was his duty to check the straps every day.

[40] As regards the capabilities of the straps, there were circumstances in which it was known that their ability to keep vehicles on the transporter could be compromised, namely when they got wet. Straps did come loose from time to time; if they got really wet, they could expand a bit. Straps could be less tense when wet. They could expand slightly and lose their ability to grip. Mr Gorman was aware of straps breaking on occasion. It was uncommon but not unheard-of. Mr Neilson agreed that wet weather would increase the chance of a strap slipping off.

[41] Both Mr Gorman and PC Neilson were aware of the propensity of straps to expand and become loose in wet conditions. Mr Gorman said that this is well-known in the industry. Neither seemed to be drawing on any special technical knowledge in expressing their views on this issue. The accused has worked as a driver loading vehicles with such straps for four years in the west of Scotland where wet weather is common. An inference can be drawn that he has become aware of the propensity of the straps he uses in his work to become loose in wet weather. In any event, I consider it open to the Court to hold that a person loading cars onto a transporter ought to acquaint himself of the known hazards of doing so.

[42] This is a quite different situation from a person who is simply employed to drive a vehicle as Mr George was in *R. v Roberts (David) & George*³. I do not consider that my approach would involve convicting a driver of negligence in maintenance as the Court in *Roberts & George* held was the case there. This accused himself created the situation which had become hazardous by the time of the accident.

(3) **By driving in the foregoing circumstances the accused caused serious physical injury to Andrew McClure.**

[43] Around 1755 hours on 5 December 2019 at Glasgow Road, Uddingston Gordon Maule was driving a motor-car transporter heavy goods vehicle with registered number SJ12 XTC⁴. The uncontested evidence of the eye-witnesses demonstrates that a Jeep Cherokee fell from the transporter Mr Maule was driving and collided with Mr McClure causing him injury.

[44] That evening Mr McClure was taken by ambulance from Glasgow Road, Uddingston to University Hospital Hairmyres, East Kilbride. He was assessed there and it was determined that he had sustained a broken left femur. He was therefore admitted and underwent surgery to pin his femur bone. He remained in hospital from 5 to 16 December 2019⁵. Coupled with the evidence of Mr McClure and Miss Gourlay, I have no doubt that the Crown case is capable of demonstrating that Mr McClure suffered serious injury in this accident.

3 [1997] RTR 462

4 Joint Minute paragraph 1

5 Joint Minute paragraph 2

(4) The driving of the accused fell far below what would be expected of a competent and careful driver.

[45] The method of securing the vehicles on the transporter is widely used in the relevant industry. It was the method expected of the accused by his employer.

[46] In *R. v Roberts (David) & George*⁶ the Court of Appeal said:

“Where a driver is an employee, it will be important to consider any instructions given to him by his employers. Generally speaking, it would be wrong to expect him to do more than he was instructed to do, provided no doubt that the instructions were apparently reasonable.”

However, it continued:

“So here, in our view, Mr George could not reasonably have been expected to have done more by way of inspection than he was told to do since there was no evidence before the jury which could have entitled them to conclude that he should have appreciated that his instructions were inadequate.”

[47] I consider that the issue here is an objective one. The expectation is that of the Court in the public interest⁷. Putting together the two parts of the paragraph I have quoted above, I consider this to be consistent with the view of the Court of Appeal.

[48] Given the danger that the loss of a vehicle poses to other road users and the public in general, I have no doubt that driving a transporter loaded with cars which were secured by a method which the driver should have known was unsafe in the prevailing conditions can fall far below what would be expected of a competent and careful driver.

6 [1997] RTR 462 at top of page 470

7 *Aitken v Lees* 1993 SCCR 845

[49] Having answered the relevant questions against the accused, the submission of no case to answer falls to be repelled in relation to charge 1.

[50] Section 40A provides, so far as material:

“40A. Using vehicle in dangerous condition etc.

A person is guilty of an offence if he uses, or causes or permits another to use, a motor vehicle ... on a road when— ...

(d) the weight, position or distribution of its load, or the manner in which it is secured,

is such that the use of the motor vehicle ... involves a danger of injury to any person.”

[51] Section 2A(2) requires the danger to be "obvious to a competent and careful driver" Section 40A has no such requirement. As a much less serious offence, it is much less exacting. In the foregoing circumstances, the submission of no case to answer falls to be rejected in relation to this charge as well.

C Decision

[52] The defence led no evidence. In closing submission, Ms Carey asked me to convict of charge 1 which failing charge 2. Mr Tierney asked me to acquit of both charges.

[53] I make the following factual findings:

- (1) 5 December 2019 was a wet and stormy day in Uddingston. By 1755 hours it was dark.
- (2) At that time Gordon Maule was driving a motor-car transporter heavy goods vehicle with registered number SJ12 XTC on Glasgow Road⁸. This was a White DAF two-axle rigid vehicle with vehicles on two levels. There were three on the upper level and two on the lower level. The vehicle on the rear of the lower level was a Jeep Cherokee registration number SG53 OGO.

⁸ Joint Minute paragraph 1

- (3) Heather Gourlay drove behind the transporter for 4 to 5 minutes. At that stage the Jeep, was bouncing as it was conveyed. It dropped back and its last two wheels went on to the ground. Miss Gourlay started to sound her horn and flash her lights to catch the driver's attention. After the transporter had passed through a second roundabout, the Jeep dropped down and veered off to the left. There was no-one driving the Jeep.
- (4) The Jeep collided with the rear of a Sainsbury's van parked nearby. Its driver, Andrew McClure, was caught between them.
- (5) Miss Gourlay continued to follow the transporter and to sound her horn and flash her lights. After about three to four hundred yards, the transporter stopped and she shouted to the driver, the accused, that he had lost a vehicle and hit a pedestrian. He said "I didn't hear you and didn't see you".
- (6) Mr McClure suffered serious injury in this accident; As a result of the collision, he had a fractured femur bone sticking through his trousers and was in excruciating pain. He was taken by ambulance from Glasgow Road to University Hospital Hairmyres, East Kilbride. He was assessed there and it was determined that he had sustained a broken left femur. He was therefore admitted and underwent surgery to pin his femur bone. He remained in hospital from 5 to 16 December 2019⁹.
- (7) At the time, Mr Maule had been with his current employer for about four years as a car transporter driver. As such, his duties were checking and loading cars and driving the truck. When first employed he had training from their dedicated trainer. He was shown how to load and unload cars and how to put them on in the correct order. There were no formal accreditation courses. They did not have refresher courses.
- (8) Cars loaded onto the transporter were secured by straps. The minimum requirement for securing a vehicle on the transporter was three straps which went over the largest part of the wheel on top of the tread before being ratcheted tight. The strap was hooked and then ratcheted to create a tension as tight as it could be got. The responsibility for loading and securing cars lay with the driver. It was his duty to check the straps every day. This would be for rips or tears or anything that makes them look weak.
- (9) After the accident, four vehicles remained on the transporter. None of them was secured by three straps. Three straps remained where the wheels of the Jeep had been. The Jeep had been front end on the trailer, its rear being the last part of the loading of the transporter. There were three straps, two looped and one broken. The looped ones were at the rear of the Jeep, closest to the back of the transporter. The broken one was at the driver's wheel. If the straps on the rear wheels came off in the wet, the

⁹ Joint Minute paragraph 2

remaining strap would be under too much pressure and likely to break under the strain.

- (10) There were circumstances in which it was known in the relevant industry that the straps' ability to keep vehicles on the transporter could be compromised when they got wet. Straps did come loose from time to time; if they got really wet, they could expand a bit. Straps could be less tense when wet. They could expand slightly and lose their ability to grip. Mr Gorman was aware of straps breaking on occasion. It was uncommon but not unheard-of. Wet weather increases the chance of a strap slipping off.
- (11) A car with a high suspension such as the Jeep was more prone to moving.
- (12) The method of securing the vehicles on the transporter is widely used in the relevant industry. It was the method expected of the accused by his employer.

[54] The only material factual dispute I have had to resolve in reaching these factual findings relates to the straps remaining on the transporter where the Jeep had been secured facing forward on the transporter. Mr Gorman said that the two rear straps were looped and the one at the driver's wheel was broken. PC Neilson, however, that the two rear straps were sheared and the one further in was still intact. Nothing was made of this difference by the parties during the trial. PC Neilson was making an inspection in his role in the road policing department and might be expected to keep notes and refresh his memory before giving evidence but he was not asked about this. Mr Gorman was very concerned about the accident, attended promptly and made an examination from which he theorised as to its cause in a manner in which his expertise was legitimately in use. In these circumstances, I have preferred Mr Gorman's evidence in this regard. No witness was asked whether Mr Gorman's view as to the causation would hold good if PC Neilson's account of the conditions of the remaining straps was correct.

[55] In the circumstances set out in my factual findings, I answer the questions I set out above as follows:

(1) **The transporter was in a dangerous state by reason the manner of attachment of the Jeep Cherokee carried on it;**

[56] PC Neilson and Mr Gorman spoke to the requirement for three points of contact for each vehicle. Although they disagree as to the condition of the remaining straps in the place where the Jeep had been, both spoke to signs indicating that it had had three straps securing it. As regards causation Mr Gorman and PC Neilson agreed that wet weather would increase the chance of a strap slipping off. All were agreed that conditions were wet.

[57] In the wet conditions prevailing, there was a danger from the loading of the transporter by reason of the use of straps which had a propensity to expand and become loose in such conditions.

[58] The situation of the other vehicles is less easy to determine; Mr Neilson rejected a suggestion in cross-examination that there were cradles which were equivalent to ties in respect of them. Although they were not tied with three straps, they were still in place after the accident and there was no suggestion that they played any part in the accident.

(2) It should have been obvious to the accused as a competent and careful driver that driving the transporter in its then state would be dangerous because of circumstances of which he could be expected to be aware.

[59] Both Mr Gorman and PC Neilson were aware of the propensity of straps to expand and become loose in wet conditions. Mr Gorman said, and I accept, that this is well-known in the industry. The accused has worked as a driver loading vehicles with such straps for four years in the west of Scotland where wet weather is common. It seems likely to me that he has become aware of the propensity of the straps he uses in his work to become loose in wet weather. In any event, I consider that a person loading cars onto a transporter ought to acquaint himself of the known hazards of doing so.

(3) By driving in these circumstances the accused caused serious physical injury to Andrew McClure.

[60] Around 1755 hours on 5 December 2019 at Glasgow Road, Uddingston Gordon Maule was driving a motor-car transporter heavy good vehicle with registered number SJ12 XTC¹⁰. A Jeep Cherokee fell from the transporter Mr Maule was driving and collided with Mr McClure causing him injury. I accept the evidence of Mr McClure and Miss Gourlay in this respect and have reflected it and the joint minute in factual finding (6). I have no doubt that Mr McClure suffered serious physical injury in this accident.

¹⁰ Joint Minute paragraph 1

(4) **The driving of the accused fell far below what would be expected of a competent and careful driver.**

[61] The method of securing the vehicles on the transporter is widely used in the relevant industry. It was the method expected of the accused by his employer.

However, I consider these matters to be mitigatory and apply the objective test in this regard.

[62] Given the danger that the loss of a vehicle poses to other road users and the public in general, I have no doubt that driving a transporter loaded with cars which were secured by a method which he should have known was unsafe in the prevailing conditions fell far below what would be expected of a competent and careful driver.

[63] It is clear that the accused failed to observe that the rear wheels of the Jeep had made contact with the road. However, there was no evidence from which I would be willing to draw an inference of fault in that regard particularly given the stormy conditions prevailing.

[64] In the foregoing circumstances, I convict the accused of charge 1 in the following terms:

(1) on 5 December 2019 on a road or other public place, namely Glasgow Road, Uddingston, he caused serious injury to Andrew McClure by driving a mechanically propelled vehicle namely motor car transporter registered number SJ12 XTC dangerously and failed to properly secure ~~five~~ motor vehicles being carried on said transporter; travel when it was not safe to do so with insecure motor vehicles on board; cause a motor vehicle there with registered number SG53 OGO to fully detach from said transporter; ~~fail to observe that the rear wheels of said motor vehicle had made contact with the road;~~ cause said motor vehicle to travel on to the road and strike a pedestrian standing there namely

said Andrew McClure, to his serious injury; CONTRARY to the Road Traffic Act 1988, Section 1A

[65] In the circumstances, I acquit Mr Maule of the alternative charge (2). I should make it clear, however, that I consider that the less-exacting requirements of that charge are made out to the requisite degree under the same deletions.