

Prosecutor:

Good morning your worships

We have one witness in the case, PC Freeman

PC Freeman hadn't attended until about two minutes ago

He makes apologies for being late

I spoke immediately outside and he informs me that he hasn't got his statement so I need to print one out for him.

So, I ask for a bit of time for me to go print that for him so that he can read through it before proceedings begin.

I apologise that I'm having to do so, but I couldn't have done it before because PC Freeman wasn't here.

So, your worships, I'll ask for 15 minutes to print off the statement. It's very important that witnesses have the opportunity to read their statements before they come into court.

Magistrate:

We'll allow 15 minutes, but I have to say, given this was, um, when was the offence? (prosecutor and defence solicitor: July last year)

The officer has known for how long he is coming today? Could he have not read his statement last night? This morning? When he's having breakfast?

I see this thing all the time, I find it very frustrating, that these sorts of things are not sorted. It really is quite exasperating.

But none the less, we'll allow the 15 minutes.

15 Minutes later, we went back into court and Freeman took the stand.

Prosecutor:

On the 24th of July last year (2015), where were you?

Freeman:

I was on duty, on mobile patrol. I was heading down towards Havant

Prosecutor:

Do you recall what time that was?

Freeman:

About half 8.

Prosecutor:

On the 24th of July last year (2015), where were you?

Freeman:

I was on duty, on mobile patrol. I was heading down towards Havant

Prosecutor:

Do you remember the road in which you were travelling down?

Freeman:

It was the M3 southbound approaching junction 13 which is where the M27 splits to the A33 towards Bournemouth or the right hand lane that take you to Portsmouth

Prosecutor:

At this point, how many lanes are there?

Freeman:

On the approach to the junction, there is three, then it splits into 4. Two to the A33 and two to the M27 Portsmouth.

Prosecutor:

How would you describe the conditions at the time?

Freeman:

It was raining, it was overcast, there was a lot of spray from the vehicles

Prosecutor:

How were the traffic conditions?

Freeman:

It was medium to heavy. Commuter traffic going to work

Prosecutor:

What was the general speed of the moving traffic

Freeman:

The average speed of vehicles was between 55 and 65mph

Prosecutor:

Which lane were you travelling in?

Freeman:

I was in lane 2 (explains that it's the most outside lane of the whole carriageway but lane 2 of the two on the right hand side of the split)

(Magistrate comments on the junction and that it knows it very well)

Prosecutor:

As you were making your journey through, what came to your attention initially?

Freeman:

(balls on about paying attention to his whole surroundings)
I became aware of the Renault Megane, directly in front of me.

Prosecutor:

What did that vehicle do?

Freeman:

On the approach to the junction, the vehicle moved from what was effectively lane 4, to lane 2 and then into the filter lane, which would be the filter lane

Prosecutor:

How many lanes did that vehicle move?

Freeman:

Effectively, the vehicle moved left into one lane, paused for a second and then moved left again into the next lane

Prosecutor:

Were you able to notice if the vehicle was indicating or not.

Freeman:

At that time, no, I didn't.

Prosecutor:

What did the vehicle then do?

Freeman:

It then accelerated and undertook a BMW that was to the Megane's right
Then about 50m before the solid white line where the junction splits, the Renault Megane pulled back in from of the BMW he undertook

Prosecutor:

Pulled into the same lane as the BMW was travelling?

Freeman:

Yes

Prosecutor:

How did the BMW react?

Freeman:

Because there was no warning, no indication from the Renault Megane, and the distance in front of it, the BMW had no alternative than to break sharply to avoid a collision.

Prosecutor:

How you respond to what you had seen?

Freeman:

Shocked, to be completely honest, bearing in mind I was in a marked vehicle. I saw the Renault Megane pull directly in the gap I had directly in front of me so there was no advantage to be gained by his actions so I intended to speak with the driver.

Prosecutor:

Can you be sure there was no indication?

Freeman:

The vehicle would show amber indications on the front rears with a repeater on the wing, which would show from my point of view that the vehicle was indicating.

Prosecutor:

What did you do after you saw this?

Freeman:

I illuminated the blue lights on my police vehicle causing the Renault Megane to stop.

Prosecutor:

After you stopped the vehicle, what did you do?

Freeman:

I went and spoke to the driver and invited him back to my vehicle to explain why I stopped him.

Prosecutor:

Freeman:

I asked him for his details and initially, he refused. I explained to him that I have made a legal requirement, he then provided me with his details.

Prosecutor:

What was the next thing you did?

Freeman:

In relation to?

Prosecutor:

The interview with the driver

Freeman:

I completed a T60 traffic offence report

(prosecution show an image of the junction to the court and ask him about it, nothing relevant was said at this part that hasn't been mentioned)

It is now the turn of my solicitor to cross-examine the officer

38:06

Defence:

Officer, I take it you know the section well

Freeman:

No, not particularly, it's not my parole area.

Defence:

The driving conditions, you mention it was raining with puddles and lots of spray and traffic was building up

Freeman:

Yes, reasonably heavy

Defence:

Reasonably heavy is quite a clear description. In your statement, which you have read, you describe the traffic flow as 'light' so light, not heavy. Then you said there were puddles etc, then you said visibility was clear, no fog, mist, you haven't circled any of those (referring to the T60 report). All you did circle 'rain' and wrote 'wet'

Freeman:

(He comments that there are only a few boxes to select

Defence:

I'll hand it to you and see if you can help me. You said you were reporting him for careless driving rather than due care and attention. I see in your completed form here that it says 'careless and inconsiderate driving'

Freeman:

It was due care

Defence:

Do you know what he's charged with?

Freeman:

Whatever's on the form

Defence:

So you've come into court today officer, and you don't know which charge this man faces?

Freeman:

Personally, I don't. I don't deal with the actual offence

Defence:

Well, I can actually tell you that he's being prosecuted for 'inconsiderate driving', which I think you can accept is a lesser situation than driving without due care and attention...uh, offence.

Freeman:

Yeah, I can accept that.

Defence:

And that it requires inconvenience to be caused to another. I'm sure you do, I'm just checking.

(hands a copy of the T60 to the officer)

Freeman:

I stop an awful lot of people and you can appreciate that it was July 2015, an long time ago.

Defence:

Can you help me what is written on the ticket, it's not exactly clear

Freeman:

Junction 13-14, silver Renault Megane, behind police...uh (skips the rest of what he was about to say because it contradicts what he said earlier), lane 3, seen to change lane 3 to lane 1 filter to junction 14, heavy traffic, approach to split, Megane changed from filter lane to lane 1, silver BMW, Megane, narrowly missing BMW in lane 1.

Defence:

Come to the circled part then, what have you circled?

Freeman:

Daylight, street lamps were off. Weather...halfway between drizzle and something, visibility - spray, road surface wet, traffic flow between light and medium.

Defence:

On that form, where you wrote condition, when you were driving, you were driving, lets keep to the motorway for now, three lanes. You were driving, you made a mistake about the direction which you were going. You actually wanted to go to Portsmouth

Freeman:

Yes, I was definitely going to Portsmouth, I was in the OUTSIDE lane.

Defence:

What speed were you travelling in the outside lane?

Freeman:

Probably, I can't remember definitely, probably between 55 or something like that.

Defence:

If I put to you, that you were certainly doing no more than 55 or 60 in the fast lane, would that be right?

Freeman:

I couldn't say, I was keeping up with the flow of traffic.

Defence:

You see, there wasn't much traffic on there because you've put light

Freeman:

Light to medium.

Defence:

That was done at the time, light to medium. We will watch in a minute, the CCTV. What I'm suggesting to you is that you're in the wrong lane, anyway. Why are you holding up traffic, a police officer in a marked car in the wrong lane, you should be in the other lane.

Freeman:

If you've got CCTV, it'll show, but I can't obviously remember. There was obviously traffic next to me in lane 2

Defence:

You estimate the average speed of other vehicles 55-65. Now, one of the other things you make a very, very strong point about is that you first became aware of the Megane, the car, directly in front of you. Can you define to me, directly in front of you?

Freeman:

The car in front of me.

Defence:

I know it may be obvious, you're there, are you saying he's directly in front of you, same lane?

Freeman:

Yes, from memory

Defence:

From memory...I'm suggesting to you that you never actually saw that car, because he was never in front of you until he cut across, but we'll come to that. But he was never in front of you, you could not see him and in the footage I'll show you, you confirm that you couldn't see him. Do you accept that?

Freeman:

No, I can't remember

Defence:

You can't remember he was in front of you?
When he changed lanes, you as well as the court knows, you can pick up the A33 from from either west or eastbound, did you know that?

Freeman:

Um...no.

Defence:

You didn't?

Freeman:

No

Defence:

He's gone off on the other side. You talk about the undertaking manoeuvre, did notice a lorry?

Freeman:

Not that I can remember.

Defence:

This BMW you said was undertaken and had to brake sharply, was that behind you or in front of you?

Freeman:

From my recollection, it was to the side of me.

Defence:

To the side of you? So you're looking like this, (looks sideways) and he's there?

Freeman:

Yes

Defence:

So how do you know he's braking sharply to avoid...

Freeman:

Because I saw the vehicle sharply

Defence:

So, there's a police car along side a BMW, does the BMW make any signs, indicate to you about possibly careless driving?

Freeman:

No

Defence:

Nothing at all?

In reality, this BMW would be extremely, extremely close and indeed, if this man hadn't come out, there could have been a collision with other cars.

Freeman:

I cannot remember, I apologise.

Defence:

You said that you caused him to stop.

He's now in front of you, yes?

I asked him to join me in the back of the car to explain why I stopped him and to watch the video.

Now, that's not perhaps the tone you used. Because, your first words to him were "I've stopped you, now tell me what you've done wrong"

There's quite a presumption there isn't there. You tell me what you've done wrong

Freeman:

No, that's not how I stop and do things.

Defence:

Really? We'll play the CCTV

(The defence plays the video evidence, stopping to ask questions or to allow PC Freeman to make comments)

Defence:

This will be you in the police car. I'm just going to play it...

I want to stop it there.

Is that where you say it's raining?

Freeman:

Sorry?

Defence:

You said it was raining.

Can you see rain on there?

Freeman:

From mobile phone footage, it's not clear

Defence:

Lets be clear, this mobile phone footage was taken while you were in the car

Freeman:

Yeah, yeah, yeah, that's fine. I'm not disputing that.

Defence:

Am I right in saying, you don't have your own CCTV because it was unfortunately lost?

Freeman:

Yeah

Defence:

Let's carry on.

Freeman:

I don't know if you noticed, but there was a black spot on his clothing, that could be from rain.

Defence:

Ok. Let's carry on. Please, say stop when you wish to comment.

Defence:

Did you hear that? "You're behind me"

Freeman:

Ok...

Defence:

That's why I suggested that he was never in front of you.
Why did you say to the court today that he was in front of you?

Freeman:

Can't understand what he says at this point.

Defence:

But your statement, you see, which you read out there, confirms that he was in front of you. You actually made a statement that is wrong.

Freeman:

(He doesn't answer this)

Defence:

Let's crack on...
Did you hear that?

Freeman:

Yeah.

Defence:

"I'd like you to point out what you think you've done wrong" That's what I asked you about.
Isn't that a loaded question? Asking someone to incriminate himself? saying "you tell me what you've done wrong". Haven't you already made up your mind by then?
Thinking he knew. You've already made up your mind.
You're asking a loaded question, aren't you?

Freeman:

Potentially

(video carries on)

Defence:

Your windscreen wipers, modern cars have intermittent.

Yours are going very, very slowly

Freeman:

Ours are automatic and variable.

Defence:

Forgive me, you've used the correct word, variable. That variable there indicates that there is very, very little light rain. You've got to wait a few seconds for the wipers to come on.

Freeman:

We are stationary so there is no spray

Defence:

I'm only saying it because you pointed it out

(video continues)

Defence:

When you say, you were in that lane, it's quite clear, you don't know which lane he was in.

You weren't challenging him saying 'no, no, you were in that lane over there'. You're not sure, are you?

Freeman:

That's not exactly what I'm saying, I'm instructing him on what's going on in the video.

(video continues)

Defence:

Is that an aggressive attitude? "We can deal with it in court"

Freeman:

That's his right isn't it

Defence:

Were you getting angry there?

Freeman:

Assertive but not angry

Defence:
Frustrated?

Freeman:
Why would I? It's my job.

Defence:
That's what I mean. Your job means you get angry when you don't get the right response

(Video continues)

Defence:
Obviously, you talk about the producer, I think everybody knows what a producer is. Did you have ANPR in your car?

Freeman:
We have ANPR equipped vehicles but I am unsure if it was switched on at the time.

Defence:
Couldn't you have used it to check the registration and done the check for the insurance etc, etc.

Freeman:
Not unless I'm logged in and because I asking for their details, I have to log in.

Defence:
And, you gave him a producer, is that right?

Freeman:
No, I didn't.

Defence:
No...why not?

Freeman:
He gave me his details in the end.

Defence:
How can you be satisfied that he's got insurance, how can you be satisfied that he's got all the requirements of the Road Traffic Act.
You said "I'm going to give you a producer" why have you not given him a producer?

Freeman:
If I suspected that the driver was driving without insurance, I probably would have

dug deeper.

(End of the video)

Defence:

The question of inconvenience, you couldn't possibly be sure, the BMW, which is the only car you say was possibly inconvenienced, was along side you, and you're presumably watching the road in front of you. Because, you're not inconvenienced, you didn't say you were inconvenienced at all, so why do you make presumptions people were inconvenienced?

Freeman:

The BMW was caused to brake sharply

Defence:

I have no more questions.

(I point out the other video should be played - a stabilised zoomed in version

The video is played but is of no help, and as the prosecution are giving evidence, I am under no obligation to help them. I would refer to this during my evidence however.)

The prosecution ask a followup question about the boxes ticked on the T60 form. Not particularly helpful to them.

Magistrates:

We have no question after that, so thank you're all done (talking to the officer).

Defence:

My solicitor puts forward a halftime submission of 'No Case to Answer' based on the following points:

His recollection is complete vague.

The principle witness saying he's not sure and got it wrong, completely. The car was never in front of him and he say's it was in front of me. He didn't clarify how he saw it, was it in his mirrors, or if he scanned him, so you can't be sure how he saw the car that he saw.

You have to ask yourself, inconvenience? Inconvenienced who? You've heard there was a BMW. The officer in the case, and in the prosecution's case as well will

obviously depend on that person was inconvenienced. We don't have anyone who was inconvenienced in court and the officer of course, not saying he was inconvenienced, not at all.

It is the sort of case, that should have gone to court.

Prosecution then make a very weak case against our submission saying 'if there is a slight chance of prosecution, it should continue.

The legal adviser gives the magistrates advice in relation to the offence including the important section Section 3ZA(4) of the RTA 1998 which states "*A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.*"

After 1 hour 26 minutes, the magistrates upheld our application of No Case to Answer.