



In The Supreme Court of Bermuda

APPELLATE JURISDICTION CRIMINAL APPEAL 2012: NO. 35

ADAM PETTY **Appellant**

-v-

FIONA MILLER
(Police Sergeant) **Respondent**

EX TEMPORE JUDGMENT (In Court)

Date of Hearing: November 5, 2012

Mr Peter Sanderson, Wakefield Quin, for the Appellant

Ms Karen King, Office of the Director of Public Prosecutions, for the Respondent

Introductory

1. The Appellant in this case appeals against the sentences imposed in respect of a series of traffic offences in respect of which he pleaded guilty in the Magistrates' Court on 8th September, 2012. The principal challenge relates to the sentence imposed for the offence which charged that he:

“On the 14th day of July, 2012, in Pembroke Parish, did drive an Extreme motorized scooter in Woodbourne Avenue whilst [his] ability to drive that vehicle was impaired by alcohol.”

2. The other related offences were using an unlicensed auxiliary cycle contrary to section 52 of the Motor Car Act 1951 and driving a motor vehicle which was uninsured contrary to section 3 of the Motor Car Insurance (Third-Party Risks) Act 1943.

3. The Learned Senior Magistrate imposed the obligatory 12 months imprisonment for the offence under section 35A of the Road Traffic Act. He also imposed fines of \$800 (for this offence) and \$250 and \$500 respectively in respect of the unlicensed driving and no insurance charges.

Legal principles governing special reasons for not imposing an obligatory period of disqualification

4. The legal principles which are relied upon arise from the fact that the Traffic Offences (Penalties) Act 1976 section 4 provides that, notwithstanding any obligatory penalty of disqualification set out in the Schedule to the Act, the Court has the discretion to impose a lesser penalty, or no period of disqualification at all, if special reasons are found to exist.
5. Mr Sanderson for the Appellant drew three authorities to the attention of the Court on the question of what constitutes special reasons. The first was the case of *Grant-v-R ; Lamb-v-Miller* [2012] Bda LR 17 (Ground CJ). The second case was *James-v-Hall* [1972] 2 All ER 59. The third was *Chatters-v-Burke* [1986] 3 All ER 168.
6. It was essentially common ground that special reasons must relate to the circumstances of the case as opposed to the circumstances of the offender. The case of *Chatters –v- Burke* was particularly relied upon as illustrating the sort of special reasons which might be found to exist in a case such as the present one. Simply reading from the headnote in *Chatters –v-Burke*, the sort of factors which can constitute special reasons for not imposing the obligatory disqualification include:

“

(a) *how far the vehicle was driven;*

(b) *the manner in which it was driven;*

(c) *the state of the vehicle;*

(d) *whether the driver intended to drive any further;*

(e) *the prevailing road and traffic conditions;*

(f) *whether there was any possibility of danger by contact with other road users; and*

(g) *the reason for the vehicle being driven at all.”*

Application of governing legal principles to facts of the present case

7. In the present case, the Summary of Evidence upon which the prosecution relied before the Learned Senior Magistrate indicates that Police attended the scene of a reported loud music event in Woodbourne Avenue when they observed the Appellant driving a red electric motorised scooter in an erratic manner. It is common ground that the scooter in question was a small toy scooter which would not be used by anyone, certainly not an adult, as a means of travelling from point A to point B. The Defendant-the Appellant before this Court- is said to have turned the vehicle around on noticing the Police approaching. When spoken to he immediately admitted: *“I shouldn’t have been riding so I put it down. I just wanna go home.”*
8. In mitigation Mr Horseman, who appeared below, in support of a plea of special reasons relied in particular on the fact that the incident in question took place on a Saturday evening on a road that was not busy in an area that was immediately adjacent to the home of the Appellant. It is unclear from the record precisely what the Prosecution said in response to the crucial mitigation assertion that the offence took place in the immediate vicinity of the Appellant’s home. But there is no suggestion that they disputed that assertion because any such dispute would have been highly material and would have to have been involved by way of a ‘Newton’ hearing which it is common did not take place.
9. The factors that Mr Sanderson summarised as amounting to special reasons were the following: the type of vehicle used; where the driving took place; the absence of any indication that the vehicle was being used as a means of transport; the road conditions; and the low risk of harm.
10. The Appellant produced an informal transcript of the hearing below in an attempt to supplement the record and to support the supplementary ground of appeal that the Learned Senior Magistrate erred failing to record his reasons for the decision. That supplementary record adds nothing to the formal written record in terms of indicating that the Learned Senior Magistrate actually articulated any reasons for rejecting the submission made by the appellant through his counsel to the effect that the circumstances of his offence amounted to special reasons. All that the Learned Senior Magistrate appears to have articulated, based on the informal transcript, is that relevant submission was rejected. No reasons appear to have been articulated at all. Certainly, the official written record is silent in that regard as well.
11. Having reviewed the record and heard the submissions of counsel I find that special reasons were in fact made out and should have been found in favour of the Appellant in the court below. I do not accept that this was a case where there was a low risk of harm. This was, as Miss King rightly pointed out, a public road or highway on the edge of the City of Hamilton if not in its actual limits. I do accept on the other hand that the combination of the facts that (a) this was an event which took place very near the Appellant’s home; (b) that he was driving a vehicle which could not conceivably be used as a mode of transport; and (c) that the nature of the vehicle was such that the speed at which it could go was comparatively low, did amount to special reasons. I reach this conclusion notwithstanding the fact that he was seen by the Police to be riding in what they considered to be an erratic manner.

12. A further factor in the Appellant's favour which does not strictly bear on the question of special reasons is that, despite the amount of alcohol that he had consumed, he readily admitted to the Police that he realised that he should not have been riding. That is indicative of the fact that he is generally a responsible young man and that he was unfortunate to have been caught by the Police, in terms of his culpability; but perhaps fortunate in the sense that his potentially dangerous riding adventure was brought to a speedy end.

Disposition of appeal

13. That said I take into account in terms of looking at what is the appropriate period of disqualification the concession by Ms. King that a 12 months term of disqualification is in all the circumstances harsh. She submitted that three months would be appropriate and I am minded to agree. I set aside the term of 12 months disqualification and substitute instead a disqualification of three months.
14. As far as the fines are concerned, I am not minded to interfere with those. It seems to me that it is easy to minimize offences such as driving a vehicle without insurance. Because in circumstances such as occurred in the present case the Appellant could well have caused someone else to injure themselves and he would have been uninsured.
15. In summary, the appeal is allowed to the extent that the period of disqualification is set aside and replaced with a period of disqualification of three months. The other penalties are undisturbed.

Dated this 5th day of November, 2012

IAN RC KAWALEY CJ