



In The Supreme Court of Bermuda

APPELLATE JURISDICTION 2020: 21

FIONA MILLER
(POLICE SERGEANT)

Appellant

-v-

LATASHA CELESTINE

Respondent

JUDGMENT

*Prosecution's Appeal against finding of No Case to Answer in the Magistrates' Court
Careless driving Section 37A of the Road Traffic Act 1947*

Date of Hearing: 17 March 2021
Date of Judgment: 19 April 2021

Appellant Ms. Shaunte S. Simons for the Director of Public Prosecutions
Respondent Mr. Marc G. Daniels (Marc Geoffrey Ltd)

JUDGMENT delivered by S. Subair Williams J

Introduction

1. The Respondent, Ms. Latasha Celestine, was tried in the Magistrates' Court on Information 19TR05071 for a single count of careless driving contrary to section 37A of the Road Traffic Act 1947. Ms. Celestine, a police officer for the Bermuda Police Service, was driving a marked police car on 13 February 2020 in the area of St David's Road and Stock's Road when she collided into a civilian motor cyclist, Ms. Hadas

Wolffe, carrying her unborn baby and seven year old son who was a front passenger in a standing position on the same motor cycle.

2. On 2 September 2020, after the Crown closed its case at trial, Magistrate Tyrone Chin ruled that the Respondent had no case to answer and discharged her accordingly. Pursuant to sections 4(1)(a) and 4(2)(a) of the Criminal Appeal Act 1952, the Crown filed a Notice of Appeal on 11 September 2020 against Magistrate Chin's decision and for an order of retrial.
3. Having received oral and written submissions from Counsel, I reserved judgment which I now give on the below reasoning.

The Evidence

4. The Crown's case, in part, consisted of the evidence of the Complainant, Ms. Hadas Wolffe and two other civilian witnesses, namely Ms. Kelly Ingham and Ms. Samantha Swainson. Additionally, the prosecution called four police witnesses, PS 741 Peter Thompson (scene photographer), PC 2350 Rawl Massiah (accident investigator of road traffic collisions) and attending officers, PC 2280 Stephen Dennie and PS 2050 Courtney Williams.
5. At approximately 7:45am on 13 February 2019 the Complainant, Mr. Wolffe, was riding his motorcycle, registration number CL227, travelling in a westerly direction on St David's Road. The Respondent was driving in a marked police vehicle, registration number 47438, on the same road in the eastbound lane. At the junction of St David's Road and Stock's Road the Respondent executed a turn on Stock's Road when she collided into the Respondent resulting in personal injury to the Complainant and her young son in addition to serious vehicular damage.
6. The damage to the police car was primarily located at the front offside (i.e. the driver's side of the vehicle). It was unchallenged on the Crown's evidence that the damage to the police car consisted of: (i) a removed nearside fog light housing; (ii) a missing front grill; (iii) a ripped front fender together with its corked backing on the driver's side and (iv) indentations on the bonnet.

7. The damage to the bike on the Crown's evidence was stated to be: (i) a dislodged instrument and dislodged instrument panel; (ii) broken side fairings; (iii) a cracked front wheel which was pushed back onto the frame.
8. It is common ground (or at least unchallenged evidence) that both vehicles as well as most of the vehicular debris were located in the westbound lane at the entrance lane to Stock's Road.
9. In the Record of Appeal ("the Record") the magistrate's note of the Complainant's evidence in chief describing the 13 February 2019 is, in part, as follows:

"I was on my way into work with my son. On my way to work I was hit off my bike. It was pretty much like a movie. It felt like slow motion. I flew over the front of the police car and landed on the right and my son was on the left. I immediately jumped up and went to him...his side. He was whimpering and said that his side was hurting him. And then it just went quiet. He just stopped responding. So I started to tap his face and arm to get his attention and wake him up and so that was a few minutes. It felt like forever and then he started to respond. He was crying. I'm not sure what time or where the paramedics came. I do know there were two ladies to ask if I am okay. I asked them if they could call my son's dad and a lady officer came over to me from the police station. I believe she was the Acting Superior Officer of that day. I don't recall her name. She asked if I had any medical conditions. At first I told her no and then I remembered that I was 9 weeks pregnant. She asked if anything hurt or any injuries. I told her anything [sic]. Blood on my knee and hand. The paramedics came and addressed my son first. He was fine and then they came to me. I got someone to call my mom. I did also ask the officer in the car that hit me. I had said did you not see me and she had said "No." I know she was still in the car at that time so this could have happened in between. I know she got out of the vehicle when the other officers had come [sic] on to the scene. Quite a few officers came on the scene. We were put into the ambulance, my son and I and we travelled to King Edward where we had medical treatment. I had stitches in my right knee, was sore on my left side, and left more on soreness and pain on my right. I had an ultrasound and then gave my statement to the officer on duty..."

10. When cross-examined by Mr. Daniels, Ms. Wolffe agreed that the Respondent had stopped her police vehicle before executing the turn onto Stock's Road. Ms. Wolffe said that she was riding her bike in the middle of her lane and on a straight path going at a speed under 40 k.p.h.

11. Photographs of the after-math of the accident were produced by PS Thompson. According to his evidence, these photos were taken at approximately 8:00am. In PS Thompson's witness statement, which was read to the Court before he was tendered for cross examination, he said, *inter alia*:

"About 8:00am on the 13th of February 2019, I attended the junction of St David's Rd and Stock's Rd, St David's to the report of a road traffic collision involving motorcycle number CL227 and police vehicle 47438. On arrival at the scene both vehicles were still in-situ and traffic was being diverted around the collision site. I proceeded to take a series of photographs of the scene and surrounding area, noting that the sun was very bright when looking Easterly [sic] along St. David's rd. I was forced to delay my photographs when looking Easterly [sic] until there was some cloud cover so the sun was not shining directly into my camera..."

12. The Crown also called PC 2350 Rawle Massiah who was admitted as an expert witness to opine on the occurrence of the accident. PC Massiah said he attended the scene at approximately 8:50am where he discovered both vehicles *in situ*. In his final conclusions, which were read in to the Court, he stated:

"CONCLUSION:

Having analyse [sic] the collision I am of the opinion that:

- 1. Hadas Wolffe was riding her motor cycle in a westerly direction along St. Davids Road at a reasonable speed which appeared from the witnesses to be within the speed limit when vehicle 47438 crossed her path. She could have done nothing to avoid the collision as 47438 was stopped and she was about to go pass on her side of the road. Had motorcycle CL277 been travelling at a greater speed the injuries received by the occupants would have been more severe.*

2. *Latasha Celestine did not provide any reason why she did not see the motor cycle; she spoke of adjusting her sun visor several times which could suggest that she was dazzled by the sun. If this is the case she should not have driven the vehicle unless she was sure it was clear to do so.*
3. *Neither Latashe [sic] Celestine or any of the witnesses spoke of any vehicle travelling ahead of her, hence she would have had a clear view of the road ahead in all directions. With the sun visor down she would still have limited view of the vehicles travelling towards her as the visor would help shade her eyes from the glare of the sun.*
4. *The collision could have been avoided by Latasha Celestine if she had checked and made sure the road was clear before making the right turn on to Stocks Road.”*

The Magistrate’s No Case Submission Ruling

13. Magistrate Chin’s written Ruling consisted of a detailed narrative of the evidence leading into the following concluding portions of his Ruling:

“Finding of Fact:

- (1) Police vehicle 47438 was travelling east on St. David’s Road.*
- (2) Motorcycle CL277 was travelling west on St David’s Road.*
- (3) The police vehicle had its headlights on.*
- (4) The police vehicle had its right indicator on.*
- (5) The sun visor was in the down position of the police car.*
- (6) The police vehicle had stopped in order to enter Stocks Road*
- (7) The collision between the police vehicle and the motorcycle occurred just before 7:50am Wednesday 13 February 2019 as the police vehicle turned into the west bound lane*
- (8) DC Peter Thompson who did take a series of photos of the collision scene was forced to delay taking his photographs when facing east as the sun was shining directly into his camera.*

The Court heard Mr. Daniels' application of No Case to Answer in oral and written submission. The Court received the Crown's reply in written form. The Court holds that the Defendant Latasha Celestine, had the vehicles headlights on, indicated right, and stopped the vehicle prior in order to turn right on to Stocks Road from St. David's Road.

The Court heard evidence in the form of P.C. Stephen Deanie's [sic] [Dennie's] witness statement that "the sun was very hot and blaring in my face so I had to drop the visor down as I was having difficulty seeing traffic ahead of me."

The Court heard evidence from Sergeant Messiah [sic] [Massiah] that the Defendant had adjusted her sun visor more than once due to the "dazzle" from the sun. The Court heard D.C. Thompson state that he was forced to delay taking photographs when looking east soon after the collision.

Each of those relevant statements persuaded the Court that the sun did impact the ability of the Defendant to drive her vehicle however brief even though she took precaution by driving with her headlights on, indicated right, stopped and used her sun visor.

The evidence which rather swayed the Court was the DC Thompson was forced to delay taking photographs facing east due to impact of the sun.

A camera is not dissimilar to the human eye. The Defendant was driving and facing in an easterly direction.

The Court after taking all of the above into consideration rules that there is No Case to Answer."

The Grounds of Appeal

14. The Crown relies on the following two grounds of appeal:

1. *That the Learned Trial Magistrate erred in law in failing to apply the correct test at the no case to answer stage;*
2. *That the Learned Trial Magistrate erred in law in that he misdirected himself in relation to inferences that could be drawn on the evidence of Peter Thompson taking photos facing east at a later time than the collision occurred.*

The Relevant Law and Legal Principles

The Law on No Case Submissions

15. In *Miller (Police Sergeant) v Richardson* [2018] Bda LR 90 I outlined the law on no case submissions as follows [paras 16-18]:

“The Law Governing Applications on No Case Submissions

There are decades of reported cases which establish that, as a matter of Bermuda law, the Courts have been guided by the Galbraith principles in identifying the correct test to be applied when determining a submission of no case to answer.

One would be hard-pressed to find an experienced criminal law practitioner who has not cited from the well-known judgment of Lord Lane CJ at p. 1042B-D:

“How then should the judge approach a submission of no case? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury

could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury...

There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

The second limb of the Galbraith test entails a judicial assessment of the quality and reliability of the evidence, rather than its sufficiency. A Magistrate is thus called upon to consider whether or not the strength of the evidence is such that it could support a conviction.”

The Law on Careless Driving

16. The meaning of careless driving is provided by section 37B of the RTA:

Meaning of careless driving or driving without reasonable consideration

37B (1) A person shall be regarded as driving without due care and attention if the way he drives falls below what would be expected of a competent and careful driver.

(2) In determining for the purposes of subsection (1) what would be expected of a careful and competent 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.

(3) A person shall be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.

[Section 37B inserted by 2012: 18 s. 8 effective 5 October 2012]

17. In Fiona Miller v D Webb [2020] SC Bda 47 App (15 October 2020) I said [paras 33-34]:

“33. In assessing whether an accused person’s manner of driving fell below the standards of a competent and careful driver, the Court will consider the question both (i) subjectively from the standpoint of what the accused person knew and (ii) objectively

so to consider the circumstances which reasonably ought to have been known by the accused.

34. As I most recently observed in Lauren Davis v Fiona Miller [2020] SC (Bda) 42 App (29 September 2020) the offence of careless driving arises where the manner of driving merely falls below what would be expected of a competent and careful driver. This is not to be confused with inadvertent negligence; nor is it suggested that proof of the actus reus alone will automatically satisfy the test on sufficiency of evidence as prescribed by Lord Lane CJ in R v Galbraith [1981] 2 ALL ER 1060. In my earlier decision in Miller (Police Sergeant) v Richardson [2018] Bda LR 90 I expressed some approval of the judicial narrative previously given to these latter points in the Ontario Court of Justice in R v Shergill 2016 ONCJ 163. ...”

Analysis and Decision

18. In assessing the merits of the no case submission before him, Magistrate Chin was required to apply the principles settled in R v Galbraith [1981] 2 ALL ER 1060. The magistrate was not called upon or even entitled to make final findings of fact as he would have had the prosecution case and the defence case closed.
19. The magistrate should have first considered whether there was any evidence of careless driving. In my judgment, there was. The Crown’s case consisted of clear evidence that the Respondent collided with another vehicle while executing a turn onto another road. The Complainant said she remained in her rightful lane and she stated in her evidence that she was traveling on a straight path. She said she was not speeding. This evidence is sufficient for the Crown to avoid a dismissal of its case under the first limb of the *Galbraith* test.
20. The second limb of the test which the magistrate failed to consider required him to ask himself whether there was some evidence on which he could convict but whether that same evidence was of a tenuous nature. Magistrate Chin ought to have addressed his mind to whether there was an inherent weakness or vagueness in the evidence which would be relied on to support a conviction. Equally, he should have given thought to whether there were any material inconsistencies in the Crown’s evidence. Had the

magistrate taken the prosecution's case at its highest he would have found it capable of supporting a conviction by a tribunal of fact properly directed.

21. Whether or not the blazing sun was a factor at the time the accident occurred and whether or not any such factor would give rise to a successful defence to careless driving was not a matter for speculation by the magistrate. This was a matter for the Defence to raise in evidence on its own case.
22. The Respondent clearly had a case to answer which could only be defeated by the Defence establishing that the Respondent took all reasonable steps to avoid the collision which ensued. In my judgment, there was a *prima facie* case raised by the Crown that the Respondent's manner of driving fell below the standard expected of a reasonably competent and careful driver.
23. For these reasons, I find the appeal ought to be allowed.

Conclusion

24. The appeal is allowed and the matter shall be remitted to the Magistrates' Court for retrial before another magistrate.

Dated this 19th day of April 2021

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT