



In The Supreme Court of Bermuda

APPELLATE JURISDICTION 2021: 02

PHILLION WEBB

Appellant

-v-

**FIONA MILLER
(POLICE SERGEANT)**

Respondent

JUDGMENT

*Appeal against conviction and sentence in the Magistrates' Court
Dangerous Driving - Section 36 of the Road Traffic Act 1947*

Date of Hearing: 14 July 2021

Date of Judgment: 17 September 2021

Appellant Ms Tiné Tucker and
Ms. Cindy Clarke, Director of Public Prosecutions

Respondent In Person

JUDGMENT delivered by S. Subair Williams J

Introduction

1. This is an appeal against a conviction entered by Magistrate Mr. Tyrone Chin on Information 19TR04351 to a charge of dangerous driving contrary to section 36 of the Road Traffic Act 1947 (“RTA”).

Appellant’s Request for Transcripts of the Magistrates’ Court Proceedings:

2. As a preliminary point, Mr. Webb complained to the Court that the DPP failed to disclose a transcript of the Magistrates’ Court proceedings.
3. By way of background, on 4 March 2021 Mr. Webb and the DPP appeared before this Court for directions preparatory to the hearing of this appeal. On that occasion Mr. Webb confirmed that he was in receipt of the Record of Appeal and I directed him to consider whether any of the Magistrate’s notes of the evidence inaccurately recorded the evidence or the proceedings. As is standard for directions given prior to the hearing of any appeal from the Magistrates’ Court, I directed Mr. Webb to liaise directly with the DPP within a specified period (28 days on this occasion) to advise whether he had any objection to the composition of the Record of Appeal or the accuracy of the magistrate’s notes of the evidence.
4. At the hearing of the appeal on 14 July 2021, in answer to Mr. Webb’s complaint, the DPP informed the Court that on 31 May 2021 her office wrote to Mr. Webb asking for him to provide a list of anything missing from the Record. The Court was informed that Mr. Webb did not in his reply raise any such concerns. I thereafter told Mr. Webb that this Court does not, as a matter of routine practice, direct for transcripts of Magistrates’ Court proceedings to be prepared due to the time-consuming and costly effects of ordering transcripts. I further reminded Mr. Webb that if a dispute as to the accuracy of the Record had arisen, he was directed by this Court to identify the impugned passage(s) and to raise it with the other side and the Court. Notwithstanding, I informed Mr. Webb that if he, during the course of the hearing, wished to bring any such dispute to my attention that I would mark the contentious portion of the Record and listen to the Court Smart audio recording of the trial proceedings.

Summary of the Facts

5. The facts in this case are more fully outlined in the judgment of Magistrate Chin. Suffice to say, around midday on 2 May 2019 Mr. Webb was travelling in a westerly direction on South Road Paget. The Crown’s case, upon which Mr. Webb was convicted, was that Mr. Webb was driving dangerously when he overtook two vehicles at a high speed and struck another two vehicles in the area of Harvey Road. One of the vehicles which Mr. Webb side-swiped was a blue car being driven in an easterly direction by Ms. Annette Cowan-

Godfrey. The other vehicle, a white car being driven by Mr. George Simmons, had been travelling in the west-bound lane in front of Mr. Webb. When that collision occurred Mr. Simmons was stopped in the west-bound lane indicating to turn right onto Harvey Road.

The Judgment of the Magistrate:

6. In his judgment, Magistrate Chin recorded the following findings of fact:

Finding of Fact

- *The grey Rover is seen by Annette Cowen-Godfrey [Cowan-Godfrey], Joseph Burgess and Geena [sic] [George] Simmons being driven at speed by the Defendant, Phillip Webb. Each independently stated also independently corroborated each other.*
- *Joseph Burgess in his car travelling east in the east bound lane on South Road sees the oncoming grey Rover veer into the eastbound lane.*
- *Joseph Burgess by his quick witted thought and action veers his car to the extreme left of his eastbound lane and so avoids any collision with the oncoming grey Rover which had gone over the yellow line on left hand bend onto Mr. Burgess' east bound lane.*
- *Mr. George Simmons travelled in the westbound lane had indicated right to turn into Harvey Road which he is entitled to do*
- *Mr. Simmons in his white car heard tires screeching therefore looked in his rear view mirror and saw the grey Rover travelling at speed towards him.*
- *Mr. Simmons took the evasive action by driving his car to the extreme left of his eastbound lane in order to give the oncoming grey Rover the widest birth possible.*
- *Annette Cowan-Godfrey travelling in the eastbound lane in her blue car was alerted by the white car driven in the westbound lane by Mr. Simmons that had intended to turn right onto Harvey Road had caused Mr. Simmons to quickly veer to his extreme left.*
- *Ms. Cowan-Godfrey witnessed the grey Rover at speed which she described as "flying" overtaking two cars in its same westbound lane.*

- *Ms. Cowan-Godfrey braced herself for the impact when the oncoming grey Rover veered on to her eastbound lane.*
- *The grey Rover made impact with Ms. Cowan-Godfrey's blue car which was in the eastbound lane.*
- *Damage was caused to Ms. Cowan-Godfrey's car due to the impact and collision by the grey Rover driver by Mr. Webb.*
- *Ms. Cowan-Godfrey suffered minor injuries which did not require hospitalization.*
- *After the grey Rover had collided with Ms. Cowan-Godfrey's blue car the grey Rover then continued in a westerly direction and damaged the right side driver's door mirror of Mr. Simmons' car.*
- *After impacting and colliding lastly with Mr. Simmons' car the grey Rover came to a halt some 75 meters away from the last impact with Mr. Simmons' car and the Harvey Road junction.*
- *The grey Rover had obtained damages.*
- *After the accident the Police marked Ms. Cowan-Godfrey's car's exact location on the road where that impact occurred.*
- *Mr. Simmons marked the location of his vehicle, and then moved his vehicle so as not to further obstruct the flow of traffic in the westerly direction.*
- *P.C. Tuzo did not know and did not take into account or consideration Mr. Simmons' car's location markings made by him.*
- *Mr. Webb is a limo driver by profession with at least 24 years experience as well as other employment which required driving qualifications to drive large vehicles such as petrol delivery trucks.*
- *Mr. Webb's grey Rover vehicle was claimed to be over 20 years old. Even though it was not ascertained how many years that Rover car was in his ownership.*
- *It can be deduced that he drove the Rover in his usual daily limo driving employment and so he must be well accustomed to the Rover's controls, console and manoeuvrability."*

7. The magistrate provided the following reasoning for his decision

“...

(1) *The act of Mr. Webb driving his grey Rover at speed in a westerly direction into the eastbound lane of South Road causing Mr. Burgess to take quick decisive evasive action to avoid a collision with Mr. Webb's oncoming car can be just if taken alone could be considered careless driving. This is if taken solely by itself.*

(2) *The further act of Mr. Webb's grey car making contact and an impact on Ms. Cowan-Godfrey's blue car compounds the issue and continuing circumstance, Ms. Cowan-Godfrey's car sustained enough damage that it could not be driven safely immediately after the impact. It had a front offside tire puncture and other damage. Ms Cowan-Godfrey sustained minor injuries.*

This further collision with Ms. Cowan Godfrey certainly raised the level of the situation from careless driving to that of dangerous driving. This first collision compounds the issue further to Mr. Webb's detriment.

(3) *The further act of Mr. Webb's grey Rover car then travelling farther and making contact with Mr. Simmons' car's right door mirror which was damaged that further compounds the issue to Mr. Webb's detriment as it was the second collision by Mr. Webb in a chain of events.*

(4) *The further act of Mr. Webb's grey Rover car then travelling even further some 75 meters, from the last collision with Mr. Simmons' car further compounds the issue somewhat to Mr. Webb's detriment. The Court must ask itself at what speed was Mr. Webb travelling that caused him to stop some 75 metres from his last collision.*

Conclusion

The Court heard the sworn oral evidence of Joseph Burgess whom the Court deemed to be a credible independent witness whose evidence Mr. Webb agreed.

The Court heard also sworn oral evidence of George Simmons who was a witness who heard and saw much of the circumstances on 2 May 2019. Mr. Simmons' white car suffered damage as his driver's side door mirror was hit by the car driven by Mr. Webb.

The Court heard the witness statement of Annette Cowan-Godfrey, who was a guest worker but now lives abroad. Annette Cowan-Godfrey gave evidence which

corroborated the high speed also stated by Joseph Burgess and George Simmons. Ms. Cowan Godfrey's blue car suffered damage which caused it to be not be able to be [sic] driven immediately from the collision location. Ms Cowan-Godfrey sustained some minor injuries.

The Court heard sworn oral evidence from Mr. Webb whom the Court does not hold as a credible witness.

The Court finds Phillion Webb guilty beyond reasonable doubt of the offence of dangerous driving on 2 May 2019.”

The Grounds of Appeal

8. Mr. Webb's grounds of appeal are pleaded in a Notice of Appeal filed on 8 January 2021 which provides as follows:

“...

- 1 The statement from Annette Cowan Godfrey was in high regard. She never attended the Court cases to confirm if her statements are true or false*
- 2 Quanae Tuzo (Police Officer) said she did not use the witness statement to charge me with the offence but other evidence and witness that was never presented to the Court.*
- 3 No record of my speed was recorded but the judge Mr. Chin said I was going over the speed limit.*

Also the gental man [sic] [gentleman] Mr. George Simon marked his own car at the scene of the accident and move[d] it before the police came to the accident scene. And the police officer Mrs Tuzo used his marking to make a case against me (Phillion Webb)”

Analysis and Decision

9. What may be taken from the grounds of appeal as pleaded and argued is that Mr. Webb felt aggrieved by Magistrate Chin's reliance on the witness statement of Ms. Annette Cowan-Godfrey which was read into evidence. He further contends that PC Quanae Tuzo

wrongfully charged him with dangerous driving as she relied on evidence which was not tendered at trial and on a road traffic accident marker positioned by Mr. George Simmons. Additionally, Mr. Webb takes issue with Magistrate Chin’s finding of fact that he was travelling over the speed limit.

10. As a starting point I would note that the offence of dangerous driving, contrary to section 36 of the Road Traffic Act provides:

11. Section 36 of the RTA provides:

“Dangerous driving

36 Any person who drives a vehicle dangerously on a road or other public place commits an offence.

[Section 36 repealed and replaced by 2012: 18 s. 5 effective 5 October 2012]”

12. The meaning of dangerous driving is stated under section 36A as follows:

“Meaning of dangerous driving

36A (1) A person is to be regarded as driving dangerously only if—

(a) the way he is driving is 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 shall also be regarded as driving dangerously for the purposes of sections 34 and 36 if it is obvious to a competent and careful driver that driving a vehicle in its current state, including any thing attached to or carried on or in it and the way it is attached or carried, is dangerous.

(3) In subsections (1) and (2) “dangerous” refers to danger either of injury to any person or of serious damage to property.

(4) In determining for the purposes of subsections (1) and (2) what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to circumstances of which he could be expected to be aware but also circumstances shown to have been within the knowledge of the accused.

[Section 36A inserted by 2012: 18 s. 6 effective 5 October 2012]”

13. In *Lauren Davis v Fiona Miller* [2020] SC (Bda) 42 App (29 September 2020) I said [11-13]:

“...

11. For an offence of dangerous driving the Crown must prove not only that the accused’s manner of driving was “far below” the standard expected of a competent and careful driver but also that it would be “obvious” to a competent and careful driver that driving in that way would put someone in danger of personal injury and / or serious property damage. In assessing the facts, the Court shall have regard to all circumstances. This means the Court will apply a subjective and objective test so to consider both the circumstances known to the accused and the circumstances which reasonably ought to have been known by the accused.

12. The offence of dangerous driving is more serious than careless driving. While the former applies to an offender who has fallen far below the expected standard, the offence of careless driving arises where the manner of driving merely falls below what would be expected of a competent and careful driver. More so, careless driving does not entail, as an element of the offence, any requirement of risk of personal injury or serious damage to property.

13. It follows that the range of sentence for dangerous driving is more severe than that for careless driving...”

14. In assessing whether the conviction against Mr. Webb is safe, I need not find that the evidence suggested that he singularly or even principally caused the accident which ensued. The burden of the Crown was to show that Mr. Webb’s manner of driving fell “far below” the standard expected of a competent and careful driver and that it was objectively obvious that his driving *posed a danger* of personal injury and / or serious property damage. So, it is irrelevant whether any other person took sufficiently evasive measures to prevent or to minimize the effects of the accident.

15. Speaking in a general sense, Road User A might have badly positioned his or her vehicle. However, this would not alleviate Road User B from the duty of careful driving. After all, the evidence could very well show that Road User B was dangerously operating his or her vehicle immediately prior to encountering a badly positioned vehicle. In such a scenario, it might be arguable that both Road User A and B were guilty of dangerous driving.

16. That being said, in this case the evidence does not suggest that Mr. Simmons (who would be Road User A) was dangerously operating his vehicle. The evidence is that he was on the main road, South Road, Paget, travelling westerly and stopped his vehicle, using his

indicator, to turn right onto Harvey Road. While the evidence of the accident alone is not conclusive of Mr. Webb's guilt, it was evidence which was strongly supportive of the Crown's case that Mr. Webb was driving dangerously.

Whether there were inconsistencies on the evidence of Mr. George Simmons moving his car prior to police arrival

17. In developing his arguments, Mr. Webb complained to this Court that the magistrate ought not to have found that the evidence of Mr. Simmons was consistent with the evidence of Ms. Cowan-Godfrey. Although it is not noted in the record that this was put to Mr. Simmons during cross-examination, Mr. Webb placed much significance on the fact that Mr. Simmons never stated in his witness statement to police that he had moved his white car prior to police arrival. In an attempt to show a contrast statement, Mr. Webb pointed to the following portion of Ms. Cowan-Godfrey's written evidence:

"...I exited my car and people were approaching me asking if I was okay. I watched the said car continue down the road. I yelled, "GET HIS LICENCE PLATE!" An unknown male who approached me said that he already got it, he was standing outside a white car. He marked the location [of] that vehicle then introduced himself to me as a victim in the collision as well. I left my car in position. I observed the driver of the white car move his vehicle off the road to allow traffic to flow west. I crossed the street and waited for the police to come."

18. Mr. Simmons did not say during his evidence in chief that he moved his vehicle prior to the arrival of a police officer. However, as Mr. Webb acknowledged during his submissions to this Court, Mr. Simmons did accept under cross examination that he had indeed moved vehicle and marked his car location. Mr. Simmons agreed that he did this prior to the arrival of police at the accident scene.

19. Magistrate Chin noted the following exchange from Mr. Webb's cross-examination of Mr. Simmons:

"7Q: Did you move your car before the police came?

A Yes

8Q Are you aware that you were the only one who moved your car before the police came?

A Yes

9Q So the police did not get a chance to mark your car?

A No, they did not because I had marked the vehicle's tyres before I moved the vehicle

10Q Did you mark other cars that were there?

A No

...

16Q I put to you that when I came around the corner you was basically stopped on a blind corner

A I was stopped at the entrance...junction to turn into Harvey Road

24Q: I also put it to you that I don't accept you marking your car and moving it before the police came.

A: That's fine that you don't accept that I'm not a professional. But I did mark the tyres to the best of my abilities

25Q: I am going to put to you that you could mark your tyres any way you like making it look like none of this is your fault.

A: That's not correct. I refuse to accept that."

20. In my judgment, this evidence was indeed consistent with the narrative provided by Ms. Cowan-Godfrey. Therefore, Mr. Webb's complaint that Magistrate Chin wrongly found that Mr. Simmons' evidence corroborated Ms. Cowan-Godfrey is without merit.

The Evidence of the Speed at which Mr. Webb was travelling

21. The Crown's evidence of Mr. Webb's speed came from Ms. Cowan-Godfrey, Mr. Simmons and Mr. Joseph Burgess. Additionally, Mr. Webb did not seriously challenge the evidence against him that he was travelling at a high speed.

22. In the tendered statement of Ms. Cowan-Godfrey she said:

“... I was driving my private motor car a blue Daihatsu Coure, along South Road, Paget in an easterly direction just past Harvey Road. I saw a white car going west on the other side of the road, it swerved over to the left. My attention was drawn to that movement. I then saw a brownish-gray car coming towards me, it had overtaking [overtaken] two other cars in the westbound lane. It was flying! He was going fast! He was going way over the speed limit. I tried to veer over to the left but it was nowhere to go, he was in my lane. I braced myself for impact by raising my right arm to protect myself. Reflexes, I guess. That car struck the front driver’s side of my car and continued...”

23. The relevant passages of Mr. Simmons’ evidence in chief is noted by Magistrate Chin as follows:

“... ”

6Q You say you were heading to Harvey Road. Tell me about that journey?

A As I was approaching Harvey Road...I was about to turn – I looked into my rear view mirror and I saw a grey Rover coming towards me very fast. Next I tried to avoid a collision. I pulled to the left as far as I could.

7Q What if anything did you hear at that time?

A I heard the tyres in the grey Rover screeching

8Q In which direction were you driving?

A In a westerly direction

9Q Which direction was the grey Rover travelling?

A West

10Q You heard the screeching of the tyres. What did you see?

A Soon after I heard the screeching of the tyres I saw the grey Rover hit the vehicle on the opposite side of the road

...

24. Magistrate Chin’s note of Mr. Burgess’ evidence on Mr. Webb’s rate of speed records Mr. Burgess as having said:

“34Q...

A *The car travelling west behind him at a high rate of speed as he tried to approach from east he probably chipped the mirror from the side...*”

25. Mr. Webb never challenged Mr. Simmons or Mr. Burgess about their description of his speed during his cross-examination of those witnesses. Further when Mr. Webb himself took the stand and was cross examined by the prosecutor about the law on the speed rate, he was plainly evasive in answering her questions and implied that he was not realistically travelling under 50 kilometres per hour.
26. On the evidence at trial, the magistrate was bound to find as a fact that Mr. Webb had been travelling at an excessively high speed at the relevant time of the accidents. Additionally, Magistrate Chin was perfectly entitled to draw an inference of high speed from the evidence of the vehicular damage and the distant location at which Mr. Webb stopped his car after the accident.
27. In my judgment, the magistrate had no reason to doubt the Crown’s evidence that Mr. Webb was overtaking vehicles and approaching Mr. Simmons’ car at an unlawfully high rate of speed.

Sentence

28. The maximum sentence which may be passed in respect of a first offence for dangerous driving is a fine of \$1,500 and / or 12 months imprisonment. Additionally, an obligatory 18 month period of disqualification applies to an accused convicted for the first time of dangerous driving in addition to a range of 8-10 demerit points.
29. In this case the magistrate imposed the mandatory 18 month disqualification period and fined Mr. Webb \$1,000.00 to be paid within an approximate month of the order of sentence, in default of which he would be liable to a 90 day period in prison. No demerits were or could have lawfully been imposed in light of the disqualification period passed. Accordingly, there was nothing manifestly excessive about the sentence passed. For that reason, the appeal against sentence should be dismissed.

Conclusion

30. In my judgment Magistrate Chin’s reliance on the untested evidence of Ms. Annette Cowan-Godfrey was reasonable as her evidence was corroborated by the other Crown witnesses who gave oral evidence and were cross-examined by Mr. Webb. The decision to charge Mr. Webb is unimpeachable on the grounds argued and the Crown’s evidence was proven beyond reasonable doubt.

31. I have also found that the sentence passed was lawful and that there is no basis for this Court to interfere with the sentence orders made by the magistrate.

32. The appeal against conviction and sentence is accordingly dismissed.

Dated this 17th day of September 2021

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE