



# In The Supreme Court of Bermuda

## APPELLATE JURISDICTION

2016: No 46

**BETWEEN:-**

**STEPHEN ROY MAYOR**

**Appellant**

**-and-**

**THE QUEEN**

**Respondent**

## **JUDGMENT**

**(In Court)**

*Appeal against conviction – whether equivocal plea*

Date of hearing: 11<sup>th</sup> January 2017

Date of judgment: 13<sup>th</sup> January 2017

Mr Richard Horseman, Wakefield Quin Limited, for the Appellant

Ms Jaleesa Simons, Chambers of the Director of Public Prosecutions, for the Respondent

1. On 2<sup>nd</sup> August 2016 the Appellant was convicted in the Magistrates' Court (Traffic Court) by the Worshipful Khamisi Tokunbo, on what was ostensibly a plea of guilty, of driving without due care and attention contrary to section 37 of the Road Traffic Act 1947. He was fined \$800 and 10 demerit points were imposed upon his driving license.
2. The Appellant appeals against conviction on the ground that his plea was equivocal.
3. I have listened to a recording of the hearing and have the benefit of a transcript. The hearing went as follows.

*Magistrate*                      *Stephen Mayor?*

*Appellant*                        *Yep.*

*Magistrate*                      *Driving without due care and attention.*

*Appellant*                        *Um, I have an explanation.*

*Magistrate*                      *How do you plead?*

*Appellant*                        *Guilty with an explanation.*

*Magistrate*                      *Hold on a second.*

*Prosecutor*                      *Your Worship, the facts according to this officer was that it was nine o'clock in the morning, traffic was heavy due to the morning rush hour and the Defendant was observed overtaking a motor car as another motor cycle was passing travelling in the opposite direction. It caused the other motorist to deviate to his near side to avoid a collision with the Defendant and when eventually stopped him and so informed him of the officer's observation, he replied he didn't see a bike, if I saw a bike I wouldn't have overtook.*

*Magistrate*                      *[Inaudible.]*

*Unknown*                        *What's that?*

*Magistrate*                      *What do you want to say?*

*Appellant*                      *I understand that I was only going 40k in stand still traffic and that was it.*

*Magistrate*                      *\$800.00, ten points.”*

4. Mr Horseman, who appears for the Appellant, submits that the plea was equivocal. On the particular facts of the case, the commission of an offence depends upon the presence of a motor cycle coming towards the Appellant from the opposite direction. Mr Horseman submits that it is not clear from the plea whether the Appellant accepted that there was an oncoming motor cycle, although he had not seen it, or alternatively whether he disputed its presence. I agree. If he was disputing its presence, then he was in fact pleading not guilty.
5. Mr Horseman referred me to a passage from Blackstone’s Criminal Practice 2017 at para D22.4:  
*“It is essential that the plea be unequivocal. ... If, when the charge is put, the accused does not answer directly or qualifies what purports to be a guilty plea with words suggesting that he is really putting forward a defence, then the court must try to resolve the ambiguity. If the plea remains ambiguous, the court must reject it and hear evidence before convicting or acquitting.”*
6. Ms Simons, who appears for the Prosecution, told me that “*guilty with an explanation*” is a common form of plea in the Traffic Court. Depending on the circumstances, the plea may mean that the defendant wishes to plead guilty but proffer mitigation or alternatively that he wishes to plead not guilty. Faced with this ambiguous plea, it is incumbent upon the magistrate to ascertain which of these alternatives is in fact intended. Due, no doubt, to the pressure of a busy list, this did not happen in the instant case.
7. This appeal is governed by section 18 of the Criminal Appeal Act 1952. Pursuant to section 18(5) of that Act, it appears to me that by reason of an irregularity in the criminal proceedings before the Magistrates’ Court,

namely treating an equivocal plea as a plea of guilty, the Appellant could not lawfully have been convicted. Instead of allowing or dismissing the appeal, I shall therefore direct that the plea of guilty be vacated and order a new trial (or, more accurately, a trial) of the Appellant before the Magistrates' Court before a different magistrate.

8. I make no order as to costs.

DATED this 13<sup>th</sup> day of January, 2017

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Hellman J