

10/1/08

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

S.C.A. No. 16 of 2007

REGINA

V.

KEN HUGH HERMON THOMAS

Appearances:

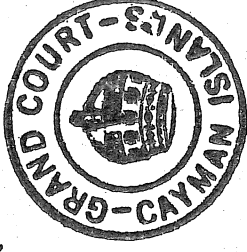
Mr. Norman Hill Q.C. instructed by Ms. Keva Reid of
McKinney Reid & Company both for the Appellant
Ms. Tanya Lobban of the Legal Department for the
Respondent

Before:

HON. JUSTICE HENDERSON

Heard:

December 7, 2007



JUDGMENT

The Appellant, Ken Hugh Thomas, appeals from his conviction in the Summary Court on charges of dangerous driving, resisting arrest, and assaulting a police officer.

Police Constable Ian Yearwood testified that he was west bound on Shamrock Road on May 27, 2005 at around 9:45 a.m. on his motorcycle. He had his blue lights flashing and his siren operating. The Appellant was east bound on Shamrock Road at the same time. The officer said that he was travelling about forty miles per hour on his motorcycle and the Defendant was travelling at around thirty miles per hour.

A truck in front of the Appellant pulled over to the side of the road and stopped, in deference to the officer's use of his emergency lights and siren. Instead of pulling over in a similar fashion, the Appellant drove to his right to go around the truck. This was in a corner and in an area where passing is prohibited. The police constable asserted that this caused him to fear there would be a head on collision. He said the Appellant's vehicle was "right in my path, on my side of the road." The officer pulled onto the soft shoulder on the left side of the road "because he was in my lane."

The officer then turned around, followed the Appellant and stopped his vehicle. He said that when he approached the Appellant he told him he was under arrest for dangerous driving. The Appellant began to dispute the legality of the arrest and then kicked the officer in the stomach. There was a struggle and the Appellant was subdued and arrested.

The Defendant testified that he had no choice but to overtake the vehicle in front of him because it had slowed down suddenly. He agreed that he moved over the centre line (unlawfully) in overtaking but disputed the extent to which his vehicle entered the lane for oncoming traffic. He asserted that he was in no danger of hitting the officer because of the distance between the two vehicles.

Mr. Hill constructed an argument, based on the speeds of the vehicles and the lack of skid marks, etc., to argue that there must indeed have been a safe distance between the two vehicles and that the vehicles could not have been in the locations described by the Crown witnesses.

The Learned Magistrate, in her reasons for judgment, reviewed the evidence in detail and stated the applicable legal principles clearly and correctly. She said, correctly, that the Appellant's duty was to drive in such a manner as to be able to stop suddenly if the vehicle in front of him also does so. She said, also correctly, that the sudden braking of the vehicle in front of the Appellant did not entitle him to overtake on a blind corner. This is especially so where the Appellant knew, or should have known, that an emergency vehicle was approaching in the lane for oncoming traffic. He did not have a clear view of the road ahead. He admitted that he only saw the officer coming around the corner after he had already pulled out to overtake the stopping vehicle.

The Learned Magistrate concluded that, in all of the circumstances, the Appellant's driving was dangerous. I see no reason to interfere with that finding. In reaching her conclusion, the Learned Magistrate relied for the most part upon facts which were conceded to be correct by the Appellant.

Officer Yearwood's testimony concerning the assault and the act of resisting arrest was supported by the evidence of Samuel Palmer, an independent civilian eye witness, and by the evidence of Detective Sergeant Best.

The Appellant testified at trial that after Constable Yearwood had pulled him over he walked up to the driver's door and punched Mr. Thomas in his face. He described a struggle in which he was simply trying to defend himself from the unwarranted

aggression of the officer. To support this evidence, the defence called Katina Powery, Verona Davis and Judith Ann Thompson. The Learned Magistrate did not accept the accuracy of the evidence of these witnesses. She preferred the evidence of the police officers and of Mr. Palmer. She gave detailed and cogent reasons for doing so. She, of course, has had the advantage of seeing the witnesses cross-examined and of observing their demeanour.

Officer Yearwood testified to having being kicked by the Appellant during the struggle. As proof of that, a photograph of a shoe imprint on Officer Yearwood's shirt was entered in evidence. The Appellant explained that this footprint was placed on the officer's shirt accidentally after the officer had thrown the Appellant face down onto the ground. The Appellant said that the officer was bending over him at the time and his foot must have accidentally hit the officer. That version of events was rejected as completely implausible. Mr. Hill has argued that the photograph confirms the veracity of the Appellant's testimony on the point because one can look at it and determine that the imprint must have been placed on the officer's shirt when the Defendant was on his stomach and kicking backwards. I have examined the photographs but I am not able to draw from them as much as Mr. Hill suggests. Without the assistance of expert evidence, all that can safely be said of the photographs is that there is something on Officer Yearwood's shirt which would appear to be an imprint of something, perhaps a shoe or a boot.

Having reviewed the entirety of the record, I see no reason to interfere with the findings of fact and conclusions of the Learned Magistrate. For these reasons, the appeal from conviction is dismissed.

Dated this 10th day of January, 2008

Henderson, J.

Henderson, J.
Judge of the Grand Court

