



28-3-12

REGINA

V

JONATHAN HAWKES

**IN OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 25TH NOVEMBER 2011**

**Appearances: Ms. Lucy Organ of Samson and McGrath for the Appellant
Ms. Laura Manson, Crown Counsel, for the Crown**

RULING

1. The Appellant appeals against a sentence of three months' disqualification from driving which was imposed for his offence of careless driving. He was also fined \$350 but that aspect of the sentence is not appealed against. The Appellant is most concerned about the driving suspension because he needs to drive for his work, a fact also attested to by his employer.
2. The offence was committed on 16 November 2010 along the West Bay Road as the Appellant, riding his motor cycle with a pillion passenger onboard, passed a car that had stopped ahead of him to allow two pedestrians to cross the road. Failing to stop his motorcycle, both pedestrians were struck to the ground by glancing blows from the handle of the motor cycle, as the Appellant rode past them.
3. One of the two victims (both of whom were young women) was still lying on the road when the police arrived and suffered bruising to the face, head, arms and

hips from the fall. She was however, taken to the hospital, treated and released within hours without any permanent injury.

4. Her companion received only minor scrapes and bruises. There was no damage to the motor cycle and neither the Appellant nor his passenger was hurt.
5. The incident occurred at 9:45 pm.
6. This is the Appellant's account of it given to the police at the scene:

"I was driving towards George Town when I saw a car stopped on the side of the road. As I was passing the car I saw two ladies walk out in the road and I blew my horn continuously but the handle of the motor bike hit them causing them to fall to the ground and also the bike."

7. The Learned Chief Magistrate, in delivering sentence, dealt with the matter as follows:

"In his plea in mitigation, Mr. Hampson asked the Court to take his client's guilty plea into account. He explained that it was a minor accident that occurred when the defendant overtook a car that had stopped in the road. The car had stopped to let two young ladies cross, but the defendant wasn't aware of that as he overtook. The young ladies were drunk and perhaps were unaware of his approach. There was a collision but on-one was seriously hurt. He asked the Court to take into account his client's good character and handed up a letter of reference for the Court's consideration.

The Court views the accident as quite serious. The defendant paid no heed to the reason for which the driver ahead had stopped, but proceeded to overtake in the turning lane. When he

saw the women instead of stopping, he "blew his horn continuously" before colliding with them. One of the women was hit to the ground and was still there when the police arrived. Both women suffered injuries.

The Court found the attempt to blame the victims egregious and unnecessary. The West Bay Road poses an acute challenge for people who wish to cross the road. A number of visitors and residents have been struck down in recent years, some fatally. Despite the defendant's good character, the accident could have had far more serious consequences for his victims. The Court is concerned with the quality of his driving which to my mind was bad enough to warrant a disqualification. The maximum disqualification is 6 months. Considering all the circumstances and the early plea of guilt, I disqualify the defendant for 3 months."

8. On behalf of the Appellant, Ms. Organ submits that the disqualification is harsh and excessive and was imposed because the Chief Magistrate failed to take account of the Appellant's circumstances. In particular, that she failed to take into account that he needed to drive for his work and so that he would be disproportionately punished for the offence. His driving, though careless, was at the lower end of the spectrum of seriousness, essentially involving only a momentary lapse of attention and judgment. He did not realise soon enough that the car ahead had stopped to let pedestrians cross the road and was contrite about his offence as shown by his plea of guilty. He presented no risk of likely re-

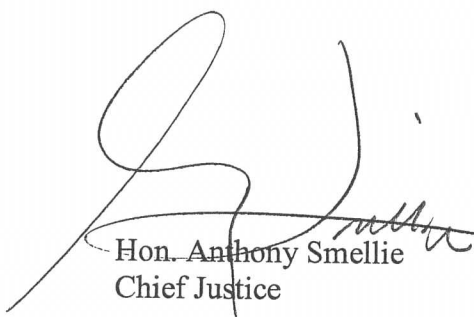
offending and had good testimonials to that effect and to good character in general.

9. By reference to the United Kingdom Sentencing Guidelines, Ms. Organ submitted that the appropriate sentence would have been a "*Band A fine and 3-4 points*" (that is: points endorsed against his driver's licence).
10. Recognising that there is no similar tariff system under Cayman Islands law, Ms. Organ submitted that the sentence of immediate disqualification, for someone like the Appellant having no previous conviction, was manifestly harsh and excessive. She theorised that "*in keeping with the practice before the Summary Court*" a term of disqualification should not have been imposed.
11. In this regard, I invited Ms. Organ in order to make good her theory, to obtain from the records of the Summary Court, a list of sentences recently given for similar offences. A report in that regard was presented two weeks ago; hence the delay in delivery of this ruling. I gather that the delay with the report was due to having to get Crown Counsel Ms. Laura Manson's approval of the report who, in turn, had to await the availability of the police files. I have taken the report into account as discussed below.
12. As I indicated during the arguments, I must attach due weight to the Chief Magistrate's wide experience of the sentencing practices before her own Courts, including as that reflects the perceived prevalence of offences.
13. That approach does not, however, displace the obligation to consider the particular facts and circumstances of the Appellant's case.
14. The Chief Magistrate cannot, in my view, be faulted for the emphasis she placed upon the need to deter offences of this kind. There was an element of calculated

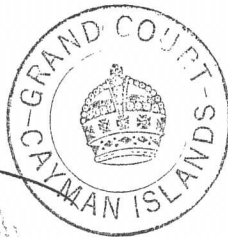
risk in the Appellant's decision (split second though it may have been) not to slow or attempt to stop his motor vehicle once he saw the pedestrians. Instead, he decided to blow his horn and continue.

15. While there is the suggestion that the young women were drunk, unaware of his approach and so failed to stop crossing and avoid the collision, it is nonetheless clear that the Appellant could have slowed or perhaps even stopped his motorcycle and so avoid the collision. Had he done that, as he should have, he would have faced no charges and so cannot blame the victims for his predicament.
16. The Chief Magistrate's decision to impose a period of disqualification cannot be faulted in principle.
17. This view of her decision is, in terms of general principle, supported by the very helpful report provided by Ms. Organ, of careless driving sentences imposed in the Summary Court in 2009 and 2010. That report, the contents of which have been acknowledged by Ms. Manson for the Crown, is scheduled to this ruling. It shows that although a minority of careless driving offences did not attract any term of disqualification, the vast majority, some of comparable degree of seriousness (or lack of seriousness) to the present, did.
18. I note, however, that in imposing a term of three months' disqualification, the Chief Magistrate made no reference to the likely effect upon the Appellant's ability to keep his employment, although, as I am told, this was brought to her attention. She also appears not to have placed any store by the fact that the Appellant had an unblemished driving record and is attested to have a good and stable personality, such as would make it unlikely that he would be encouraged by a lesser term of disqualification to re-offend.

19. The scheduled report shows also that some less serious offences of careless driving attracted a shorter term of disqualification or no disqualification at all: Gerald Bush, Rafael Moses, Ashley O'Neil, Carol Ramoon and Thimoty Sevik.
20. With these last mentioned factors in mind, I consider that the period of three months' immediate disqualification was unduly harsh and excessive. I reduce it to one month's disqualification with such period of disqualification already served (before the stay of execution of the sentence pending this appeal was imposed) to be taken into account.
21. Otherwise, the appeal is dismissed.


Hon. Anthony Smellie
Chief Justice

March 28 2012



SCHEDULE TO THE RULING

REPORT ON CARELESS DRIVING SENTENCE

Disqualification

1. In 2009 the following individuals were disqualified from driving for the offence of careless driving:

Carla Brinson (3722/2001) for 15 months (p. 2/48)
Lenworth Bailey (01454/2009) for 6 months (p. 7/48)
Gary Bernard (05866/ 2008) for 6 months (p.7/48)
Kareem Rakine (02386/ 2009) for 6 months (p. 30/48)
Arnold Rodriquez (05028/2009) for 6 months (p. 31/48)
Oral Clarke (07304/ 2008) for 6 months (p. 43/ 48)
Keith Orett (00864/ 2008) for 15 months (p. 45/48)
2. There is no information regarding the facts of these cases or the circumstances of the defendants. Seven people were purportedly disqualified for careless driving out of 372 individuals who were convicted of the offence in 2009
3. In 2010 the following individuals were disqualified from driving for the offence of careless driving (the facts come from summaries provided by the Crown and do not assist with the circumstances of the defendants) :

Jerru Anderson (01520/ 2010) for 12 months (p. 5/ 56)

Anderson was observed travelling at 72 mph in a 25mph zone .The vehicle had damage to the front bumper, left doors and left side panels and rear bumper and had caused damage to the fence of #22 Willie Farrington Drive West Bay. Mr Anderson was under the influence of alcohol and did not have a valid driving licence.

Marc Anop (04263/ 2010) for 9 months (p.8/ 56)

In this case the injuries caused in the accident were to two individuals. One lady received bruises to the right side of the face, both ankles and left arm. While the other lady had bleeding in her brain a fracture on the right side of her face and was admitted to the Intensive Care ward at the hospital and then air-lifted to Jamaica for further treatment. The defendant left the scene of the accident.

Sean Bennett (2602/ 2005) for 27 months (p.9/56).

The defendant lost control of his vehicle and collided with the corner post of a chain link post by Cayman Distributors and his vehicle flipped over and spun around. No-one was injured. He was under the influence of alcohol.

Gerald Bush (2334/2005) for 0 months (p. 13/56)

It appears there was no disqualification in this case. Mr Bush's vehicle crossed the centre line of the road and hit an on-coming vehicle causing damage to both vehicles and slight chest injury to the driver of the other vehicle. Mr Bush was under the influence of alcohol.

Eric Castro (00095/2010) for 3 months (p. 14/56)

Manilo Conolly (04982/2010) for 6 months (p.16/56)

No injuries or accident in this case but the level of driving was extremely careless. The defendant was seen by police to be travelling at 77mph on Bobby Thompson Way where the speed limit is 30mph and he was found to be intoxicated. He was originally charged with dangerous driving and pleaded guilty to careless driving.

Shannon Emslie (6404/2007) for 2 years (p. 22/56)

Defendant was travelling down the West Bay Road, when the vehicle in front of him stopped at the traffic lights at the intersection with Lawrence Boulevard the defendant drove into the rear of the vehicle causing minor damages. The defendant was under the influence of alcohol and said he did not see the vehicle stop in front of him. When he attempted to exit his vehicle he couldn't walk and fell and had to be assisted by the police officer.

Lambert Haughton (4524/2005) for 6 months (p. 25/56)

Defendant over took another vehicle on a slight left hand bend on Seaview Drive and lost control, the driver over corrected and collided with a vehicle which was travelling in the opposite direction causing the other vehicle to overturn and roll a few times. Both vehicles were totally destroyed. Three people who were on the back of the defendant's vehicle were thrown on the roadway while the driver and passenger of the other vehicle were trapped and had to be rescued. One of the occupants of the

defendant's vehicle received a fractured left leg and torn ligaments which required surgery.

Rafael Moses (11296/2007) for 1 month (p. 34/56)

A vehicle collided with a picket fence at #6 Mary Street. The driver fled the scene. Mr Moses did not have a driving licence.

Ashley O'Neil (1617/2007) for 0 months (p. 36/59)

Gerald Parson (2229/ 2005) for 1 year (p. 37/59).

Mr Parsons was seen at 10.30pm driving at 82mph on the West Bay Road. At 11.15pm police attended a car accident at Miss Daisy Lane where Mr Parsons lost control of his vehicle and hit his wife. His wife sustained injuries which left her hospitalized for over two weeks and included broken bones in her left leg and arm. Mr Parsons was under the influence of alcohol.

Carol Ramoon (3110/ 2006) for 0 months (p. 40/56)

Appears this defendant was not disqualified from driving. Defendant's vehicle was involved in an accident on Breakers Road where she hit another vehicle when she was attempting to overtake it and other vehicles were coming in the opposite direction and lost control of her vehicle.

Thimoty Sevik (00144/ 2010) for 30 days (p. 44/56)

According to papers received from the Crown this man was in fact fined for careless driving and disqualified for 30 days for leaving the scene of the accident.

Uke Dixon (4819/2007) for 3 months (p 54/56)

Travelling at a high speed at the junction of Crewe Road and Smith Road lost control of his vehicle and crossed the centre line and collided with an oncoming vehicle pushed the oncoming vehicle off the road and making it spun around nearly 180 degrees. Both vehicles received extensive damage. The driver and passenger of the other vehicle received serious injuries and were taken to hospital. The defendant and his passenger received slight injuries. The defendant was under the influence of alcohol

4. It appears at least three of these cases in fact did not result in disqualifications for careless driving (Sevik, Ramoon, O'Neil, Bush). Equally some of these individuals were disqualified for more than the maximum for careless driving of 12 months (Emslie and Bennett) and so it appears that they may have also been convicted of other driving matters which carry disqualification as a penalty.
5. All these cases have either more serious injuries as a result of the dangerous driving and or more careless driving and nearly all of them involve the driver being intoxicated.

Fines

6. In 2009 372 offenders were convicted of careless driving. The total amount of fines imposed on all offenders convicted of careless driving was \$71255. That makes the average fine imposed to be approximately \$203. However it is accepted that 132 offenders received no fine at all and that potentially skews the statistic so if those offenders are exempted from the calculation the average fine is approximately \$327 per offender. The highest single fine imposed was \$700.
7. In 2010 309 offenders were convicted of careless driving. The total amount of fines imposed on all offenders convicted of careless driving was \$67892. That makes the average fine imposed to be approximately \$220. However, it is accepted that 92 offenders received no fine at all and that potentially skews the statistic, so the average fine if those offenders are exempted from the calculation is approximately \$312 per offender. The highest fine imposed was \$900.