1995.

Opin

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

SCA #98/92

FLORENCE GORING v. REGINA

Mr. Murray for the Appellant
Ms. Dilbert for the Crown

JUDGMENT

On a conviction for driving a motor vehicle without insurance, contrary to Section 3 (1) of the Motor Vehicle Insurance (Third Party Risks) Law, 1964, the appellant was disqualified for twelve months and now appeals against the order for disqualification. Such disqualification was mandatory under the Law in the absence of special reasons. The appellant argued that there were special reasons for not imposing the order for disqualification but these special reasons did not commend themselves to the learned Magistrate.

The appellant was involved in a motor vehicle accident on West Bay Road at 1:25 p.m. on Saturday the 29th June, 1991. The accident was not her fault. When her documents were checked by the police it was discovered that she was uninsured.

The appellant told the Court that she had succumbed to an eye infection two days before the accident. That on the day she drove her motor vehicle she had called for a taxi to take her to hospital but the taxi had not arrived. The eye infection was acute by that stage so she drove the vehicle to the hospital. That after the accident she was allowed by the police to proceed on her way to the hospital.

Exception is taken to this passage in the learned Magistrate's reasons for failing to exercise his discretion to not disqualify the appellant:

> "Crown not able to verify that the investigating officer was so impressed that he allowed the defendant to drive on to the hospital. A doctor's certificate would also have given the Court greater

> confidence in the mitigation put forward."

When a defendant makes a statement of fact in mitigation then the Court must usually accept that statement unless it hears evidence from the Crown to the contrary (see for example R. v. Graham Cholette (SCA 29 of 1990). The learned Magistrate would have been in error if he had based his decision on disbelief of the appellant's medical condition. However, he went on to comment that even if the eye infection were verified he would not exercise his discretion in the appellant's favour, because she could have attempted to call an ambulance and in any event the illness was of two days duration and was not sudden.

I would look at the matter in this way. The appellant asserted, without contradiction, that she drove the vehicle to get to the hospital because of an eye infection. That fact must be accepted by the Court and it must also be accepted that medical emergency may amount to a special reason for not disqualifying a defendant charged with driving without insurance. However, it is for the defendant to satisfy the Court that a discretion must be exercised in her favour. Relevant to the exercise of that discretion is the severity of the illness or injury requiring the journey to hospital. The fact of the illness is accepted; the degree of illness is an issue upon which the Court falls to be persuaded. In this case the appellant did not bring any medical evidence to support her contention that it was necessary for her to drive on that Saturday. At the time the police officer allowed her to drive on to the hospital we do not know whether he was aware that she was uninsured.

In all the circumstances the appellant did not do enough to satisfy the Court that it should not put into effect the mandatory sanction.

The appeal is dismissed.

Judge