

Open Court

Chief Justice 27.7.94
Pm

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA# 54/93

27-07-94

CYNTHIA S. TERRY vs REGINA

Mr. Graham Hampson for the Appellant
Mr. William Helfretch for the Crown

JUDGMENT

Schofield J.

This appeal arises out of a motor vehicle accident which occurred adjacent to the Seven Mile Shops on West Bay Road and the appellant's conviction on a charge of careless driving, contrary to Section 66 of the Traffic Law as a result thereof. Police Sergeant Elliott was riding a police motor cycle out of George Town at about 5 p.m. on the 14th September 1992. He was on his way to the Governor's residence from where he was to perform escort duties. He was, on his own admission, late for duty because according to his operational order he was to be at the Governor's residence by 5 p.m. However, Sergeant Elliott's evidence was that he was travelling within the speed limit, at between thirty and thirty-five miles per hour.

He testified that as he approached the Seven Mile Shops there was one car in front of him which was indicating to turn left into the shopping area. He pulled to the centre of the road, about two feet on his own side of the white line. Sergeant Elliott said he noticed a car entering West Bay Road from the Seven Mile Shops. This was the car driven the appellant who, he said, he noticed was



finding of guilt. The prosecution case was not so undermined by the discrepancies in the evidence of the witnesses as to justify the learned Magistrate acquitting the appellant at the end of the prosecution evidence. He was, therefore, right to dismiss the submission of no case to answer.

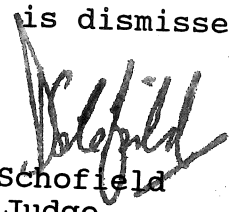
For my part I would prefer the evidence of Mr. Loof to that of Sergeant Elliott for the officer was rendered unconscious by the impact and his memory may have been affected thereby. Mr. Loof had a better view of the incident than either of the drivers involved in the impact. The learned Magistrate's findings, set out in a careful judgment, do not expressly say as much for he concentrated on the evidence relating to the appellant's driving. In this the learned Magistrate adopted the correct approach for it is not Sergeant Elliott's driving which was the subject of the charge, although of course whether he put a prudent driver in jeopardy is relevant to the determination of the case. The learned Magistrate quite rightly did not seek to determine who was to blame for the accident. He determined whether the appellant was guilty of careless driving, taking into account all the circumstances, including Sergeant Elliott's driving. The test to be applied is whether the appellant was exercising the degree of care and attention which a reasonably prudent driver would exercise in the circumstances.



And the learned Magistrate put his finger on the issue when he commented that although there are not many motor cycles on the Island, they do exist on our roads. They do overtake slow-moving traffic and a prudent driver should be on the look

out for them, or indeed for any other hazard, when undertaking the manoeuvre of pulling out on to a busy road. Surely the matter was put beyond doubt by the appellant's admission that she did not see the motor cycle before impact. There is no evidence that the motor cycle was travelling at high speed. Had the appellant been keeping a proper look out she would have seen it before she did.

The appeal is dismissed.


D. Schofield
Judge

27th July, 1994

