

SAINT KITTS AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 1 OF 1993

BETWEEN:

MC MILLAN HAZEL

APPELLANT

and

LICENSING AUTHORITY

RESPONDENT

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice C.M.D. Byron - Justice of Appeal
The Honourable Dr. N.J.O. Liverpool - Justice of Appeal

Appearances: Mr. Vernon Viera, with him Mr. Lindsay Grant for the Appellant
Mr. Malcolm Holdip, D.P.P. for Respondent

1993: March 22.

JUDGMENT

BYRON, J.A.

On 18th November, 1992 the learned Magistrate District "A" convicted the appellant for driving without due care and attention contrary to Section 53 of the Vehicles and Road Traffic Act Cap. 270.

This conviction arose out of a collision between the appellant who was reversing his motor car to leave the parking at the Baker and Kelly Building at George Street in Basseterre, St. Kitts and the virtual complainant who was driving his motor car to enter the parking lot from the said George Street.

Three versions of the facts were given. One by the virtual complainant, another by a passenger in the car both of whom were witnesses for the prosecution. The third version was given by the appellant himself.

The guilt of the appellant in this case was dependent upon the prosecution establishing that he had reversed his car from its position in the parking lot without ensuring that it was safe to do so. There was evidence from the passenger in the virtual complainant's car which suggested that it was the virtual complainant who was in breach of her duties of care by entering the parking lot while the appellant was already reversing. This contradicted the evidence of the virtual complainant who stated that it was while she was entering the parking lot that the appellant commenced to reverse.

The learned Magistrate in his reasons for the decision after commenting on certain aspects of the evidence stated:-

"Consequent upon the foregoing the Court believed the evidence adduced by the Prosecution and did not believe the evidence given by the Defendant/Appellant".

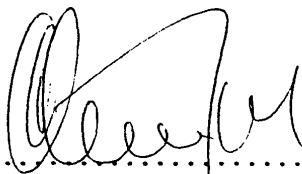
The learned Magistrate having rejected the appellant's evidence as being untrue could not have relied on it in any way. Having believed the "evidence adduced by the Prosecution" including as it did the evidence that suggested that the virtual complainant's car entered the parking lot while the appellant was already reversing, he did not go on to express any specific findings of fact on the crucial issue of this case on which the guilt of the appellant turned.

In effect the Magistrate failed to resolve the conflict between the testimony of the virtual complainant and the other witness for the prosecution as a result of which we are unable to determine the facts on which he based his decision.

Bearing in mind that this is a criminal case where the burden of proof to the standard of certainty is on the prosecution and that the evidence adduced by the prosecution, which the Magistrate stated he believed, was open to a finding that was favourable to the appellant, we conclude that the conviction is unsafe and unsatisfactory and allow this appeal and set aside the conviction and sentence.


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C.M.D. BYRON
Justice of Appeal


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SIR VINCENT FLOISSAC,
Chief Justice


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N.J.O. LIVERPOOL,
Justice of Appeal