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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO: 617/93

JOHN KIM DALE EVANS v REGINA

William Helfretch Esq. for the Crown
A. Steve McField Esq, for the respondent

JUDGMENT

Schofield J.

This is an appeal brought by the Crown by way of case stated against a decision of the learned Senior Magistrate recorded on the 1st April 1993. Although the provisions of section 165 of the Criminal Procedure Code in relation to the duties of the learned Magistrate on being requested to state a case pursuant to section 163 of the Code do not appear to have been complied with, I have sufficient material before me from which I can determine the facts and the questions of law for my opinion.

John Kim Dale Evans ("the respondent") was, on the 1st October, 1992, a Detective Constable on duty driving a hired Nissan Sunny motor car in West Bay, Grand Cayman. He had cause to give chase to a Mazda motor car and as they were travelling at speed along West Bay Road the Mazda car suddenly turned into Governor's Harbour. In an attempt to follow the Mazda motor car in that manoeuvre the respondent



lost control of the car he was driving and spun into an lamp pole. The Nissan Sunny car was a total write- off.

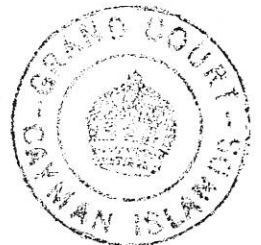
On being charged with careless driving, contrary to section 66 of the Traffic Law 1986 (Revised), the respondent pleaded "guilty". The learned Magistrate heard the facts presented by the Crown and the mitigation put forward by Mr. McField on behalf of the respondent. He then made this decision:

"This defendant was performing his duties as a police officer and as a police officer ought to do. If I allow this conviction, what I would be doing is discouraging them from carrying out their duties in chasing fugitive cars. If the police are in a legitimate pursuit and the car turns off the road, they're going to follow, and if they lose control and crash ... and then they can charge you for careless driving, for that other police officers would be discouraged. This prosecution should have never taken place. Mr. Evans go. No conviction".

There appears to be some confusion in the minds of counsel as to the nature of the order of the learned Magistrate. If he purported to acquit the respondent then clearly he was in error. To do so he would have had to refuse to accept the plea of "guilty" and hold a trial, hearing the evidence and determining upon it.

However in my view, the learned Magistrate did not purport to acquit the respondent. He discharged the respondent pursuant to Section 71 of the Criminal Procedure Code. That Section reads:

"The court having heard both the prosecutor and the accused person and their witnesses shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, at its discretion, or may with or without recording a conviction, if it is of the



opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally".

Learned Crown Counsel argues that section 71 can only be invoked in the case of a "not guilty" plea. He argues that by requiring the court to hear both prosecutor and accused person and their witnesses" the Legislature was precluding the use of its provisions when no evidence is heard i.e. on a "guilty" plea. With respect I cannot accept that argument, for if that was the Legislature's intention the section could have been worded to expressly exclude cases where an accused person has pleaded "guilty". It does not do so. Crown Counsel argues that to follow the section the Court must hear from both prosecutor and accused person and must hear from their witnesses. That would exclude a case where on a "not guilty" plea an accused person elects to remain silent. It would exclude a case where he elects to call no witnesses. It would exclude a case where both prosecution and the accused person admit all the facts of the case pursuant to section 25 of the Evidence Law and decide to call no witnesses, relying upon argument on the legal consequences of the facts admitted. I cannot accept that that was what the Legislature intended. I cannot accept that section 71 cannot be applied where the partes, or one of them, elects to adopt a procedure which requires no witnesses to be called. In my judgment all section 71 requires is that the Magistrate must hear all that is sought to be put before him before he applies the section. If no evidence is called, as in the case of a plea of "guilty", the Magistrate can proceed to discharge an



accused person pursuant to section 71 without convicting him. This is what the learned Magistrate did in the case we are now dealing with

In refusing to convict the respondent the learned Magistrate applied erroneous principles. He seemed to be saying that as a matter of principle a police officer engaged in legitimate pursuit should not be charged if he drives carelessly. That is against all the authorities. In Woods v Richard 1977 Cr. App Rep. 300 it was held that no special standards of care are applicable to police drivers when summoned to an emergency. The test must be what is due care and attention in all the circumstances of the case. In that case, on convicting of careless driving a police officer who was driving in an emergency situation, the justices imposed an absolute discharge and found special reasons for not endorsing his driving licence. The English Divisional Court upheld that decision. In R v Lundt - Smith [1964] 3 All ER 225 an ambulance driver driving an ambulance with a patient inside who had to reach hospital speedily drove across traffic lights which were against him sounding his horn, flashing his lights and ringing his bell and keeping a look out. Tragically he hit a poorly lit motor scooter crossing the junction, killing its rider. Hinchcliffe J. noted that there was no defence to a charge of causing death by dangerous driving and remarked that it was a proper case to bring. However he discharged the ambulance driver unconditionally and did not disqualify him from driving.

In exercising his discretion in not convicting the respondent the learned Magistrate failed to appreciate that the respondent's driving




was subject to the same standard of care as any other driver. It is wrong to apply a lower standard of care in driving from police officers engaged in emergency operations. The learned Magistrate failed to apply the proper principles in exercising his discretion.

In my judgment it was not expedient (using the words of section 71) to inflict punishment upon the respondent. However, on his admission that he drove carelessly and on the facts of the case a conviction should have been recorded. It should only be in the most minor of cases or where the culpability of an accused person is minimal that upon a charge being proved no conviction is recorded. If this had not been a proper case to bring then the learned Magistrate would have been justified in his decision. But the authorities show that it was a proper case to bring. *hear! hear!*

In the event I set aside the order of the learned Magistrate. I substitute therefor an order convicting the respondent of the charge laid and an order that he be discharged absolutely and that his driving licence be not endorsed.

2nd September, 1994


D. Schofield

Judge

