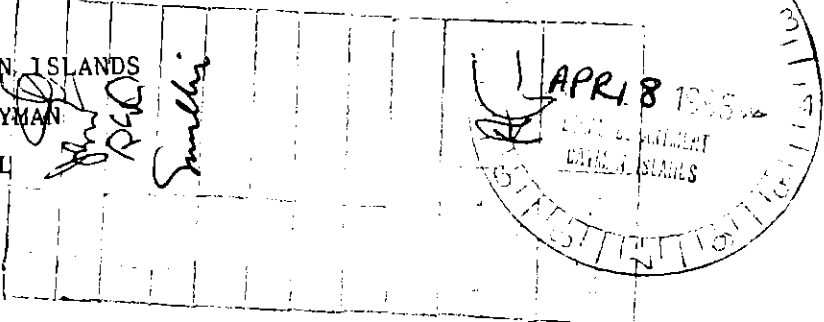
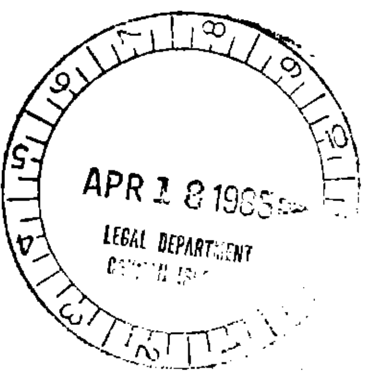
Criminal. 17.4.85





IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL

APPEAL NO. 13/85 (Criminal)

BETWEEN: NEVILLE W. LEVY Appellant

AND: REGINA Respondent

Mr. Ramon Alberga Q. C. for the appellant.
Mr. Ground for the Crown.

Reasons for Judgment

Yesterday I dismissed the appeal against conviction on the charge of disorderly conduct and confirmed the decision of the Summary Court. On the charge of failing to stop after an accident, I reduced the period of disqualification to four months but otherwise confirmed the sentence of the lower court. I said that I would give my reasons for these decisions today.

In relation to the appeal against conviction, the evidence of Police Constable Ennis was that while in uniform on patrol on 17th November, 1984 at 4:25 p.m., he received an accident report, as a result of which he received certain further information from a Pastor McDonald. As a result of this he went to Mr. Levy's house.

In fact it was not disputed that at about 4:20 p.m. on Willie Farrington. Drive, Mr. Levy in his car had collided with a car in the other lane, that this was the result of careless driving by Mr. Levy, that he failed to stop and returned home, and that the other driver sustained some damage (which I accept as being light) and reported the accident to the Police.

The police officer arrived at Mr. Levy's house at about 4:50 p.m. He had a conversation with Mrs. Levy who told him her husband was asleep. The officer went into the house and found Mr. Levy lying on his bed. Although it was submitted that he was not invited in there, the officer gave evidence that Mrs. Levy took him to the bedroom, and there is no evidence that he was told not to enter or to leave the house.

The officer said Mr. Levy was on the bed wearing his trousers, and that when he saw Constable Ennis he buried his face in the pillows. The constable also testified that Mr. Levy's speech was slurred, and his eyes were red, and that after the appellant declined to accompany him to the Police station he arrested him "on suspicion of driving whilst intoxicated". In

cross examination he said that there was a strong smell of alcohol on his breath. Previously in cross examination, after repeating that his eyes were red and his speech slurred, the officer said that "on all the facts, I arrested him on driving whilst intoxicated" and later he said "I arrested him at home. I told him I was arresting him on suspicion of driving under influence of alcohol." Still later he said "I did not go to Mr. Levy's home for purpose of asking him to come to the Police Station for a breathalyser test. I had not come to that conclusion yet . It was fact of accident and speech and breath."

Mr. Alberga referred to an answer in the middle of his cross-examination when the officer said "It was not what I saw in his bedroom that led me to conclusion that he was driving whilst intoxicated. I had no other evidence." He submitted that the first sentence of that answer was palpably false. With respect I cannot agree. That one statement has to be looked at in the context of the whole of his evidence. I agree that it appears to contradict the rest of his evidence on this point but it is in my view very clear that the officer was saying, when the whole of his evidence is taken into account, that he came to his decision to arrest Mr. Levy after he had seen his appearance and demeanour at home.

There was ample evidence that the officer arrested him on suspicion of driving while intoxicated in the reasonable belief that he had committed that offence. The report of the accident and the appellant's demeanour and appearance half an hour afterwards provide the basis for this. The conclusion to which the officer came at the time of the arrest was in my view quite reasonable.

I therefore do not consider that there was an unlawful arrest, but assuming for the argument that there were, it does not to my mind follow that the conviction for disorderly conduct should be quashed. I agree with Mr. Ground's submission that in the evidence, there was no justification for the appellant's conduct at the station, even if he had been wrongly arrested.

For these reasons, I dismissed the appeal against this conviction.

In dealing with the appeal against sentence, I want to take this opportunity at the outset to make a general observation about motoring offences. Driving standards should be a matter for concern. There is statutory provision for the publication of driving statistics and the accident rate is high. Motor vehicles are an actual and major source of danger to persons and to property.

I accept in this case first that the danger was never really more than potential, and also of course that the sentence now under review is for failing to stop as such. I nevertheless want to make this general point because the learned Magistrate, as I have said before, bears the day to day responsibility for dealing summarily with traffic offences. He hears more than most people of the harm that is done, and the dangers that exist, and I think he is in the best position to judge the need for firmness.

On its face, the purpose of section 59 (1) is to require drivers who are involved in accidents to stop; and if reasonably required to do so, to identify themselves and their vehicles.

I cannot find in the Law a requirement that a person who is involved in an accident should stop specifically to ascertain whether any person requires aid, which is I think the law in some jurisdictions.

Mr. Levy ought to have stopped. He was required to do so by law. Damage, although slight, had been caused. Had he ascertained that, he would have been under a legal duty to report it as soon as practicable to the police.

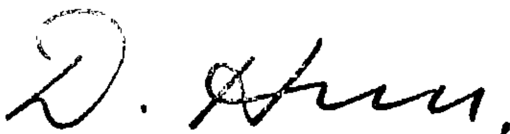
Although a man is not obliged to incriminate himself, where a road user is under a duty to stop and provide information as a matter of law, due compliance with that duty clearly facilitates the investigation of accidents and in my view this is also a relevant consideration to be taken into account.

I think that disqualification is justified for an offence such as this. As to the length of disqualification, in this court last week I upheld a six month suspension for careless driving in circumstances which caused a real risk of danger to other road users. That was a serious case of careless driving. Some time ago a disqualification for driving at high speed on West Bay Road, where the danger was as I understand it never more than potential, was not challenged. A charge of failing to stop, in itself, is admittedly somewhat different. It is an offence to which the standard penalties of a fine of $200 or imprisonment for three months (or both) and the discretionary power to disqualify apply. The Magistrate imposed a fine of $100. By way of comparison, the penalty for driving while intoxicated is a $200 fine or imprisonment for six months (or both) and the standard period of disqualification is twelve months.

I think the period of disqualification in this case should be four months. I say this first because having regard to the fine that was imposed, and also to the comparison I have made with other offences, it seems to me to be the appropriate period. I also say it because

while I do think that the failure to stop complicated the investigation of the accident, I also consider it desirable to be seen to set a certain distance between disqualification for the offence in question and for the offence of which he was found not guilty.

For these reasons, I varied the term of disqualification accordingly.



David Hull
Puisne Judge

17th April, 1985