20.6.80

In the Grand Court of the Cayman Islands
Holden at George Town on 10th June 1980
Before The Honourable Sir John Summerfield, Chief Justice

Criminal Appeal No. 7 of 1980

TIMOTHY ROSS

v.

REGINA

Mr. Ritch for appellant
Mr. Martin for respondent

JUDGMENT

The main thrust of this appeal against conviction for the offence of dangerous driving contrary to section 65 of the Traffic Law was that the learned Magistrate's finding of fact was irreconcilable with the evidence and, further, that the evidence for the prosecution, even if accepted, did not rebut the defence evidence as to the cause of the accident.

The substance of the evidence of the first witness for the prosecution was to the effect that the appellant in his car had overtaken this witness's car on a curve at high speed in the face of oncoming traffic and had skidded into the oncoming vehicle. The point was made that the driver of the oncoming car, also called as a prosecution witness, stated in evidence that no car other than that driven by the appellant was coming towards him. It was contended that the learned Magistrate could not on that account accept the evidence of both those witnesses, as he purported to do, as, if the appellant had been overtaking the first witness on the curve, the second witness would have seen both cars.

The learned Magistrate treated this discrepancy as "minimal". It had been brought to his attention in the defence counsel's closing address.

The credibility of a witness is primarily a matter for the presiding Magistrate and this court will not intervene unless his findings are unreasonable or cannot be supported on the evidence. It may well be that the driver of the oncoming car was so pre-occupied with the danger facing him that he did not notice the other car. He may have forgotten its presence. It is not altogether clear from the record as to which point in time he is speaking

of. Certainly the discrepancy is not of such a nature as necessarily to destroy the credibility of the first witness. The learned Magistrate, having applied his mind to the discrepancy, was entitled to reach the conclusion he did.

It was the case for the defence that the cause of the accident was a mechanical defect, namely, the deflation of his front offside tyre which caused his car to skid to the right. This was rejected by the Magistrate and it was a matter of complaint that in doing so he misconstrued the appellant's evidence. The learned Magistrate said he did not believe that any damage was done to the tyre by a stone in the road whereas the appellant had never mentioned a stone in the road. The appellant had merely spoken of hitting an object.

Reliance was placed on the case of R. v. Spurge 1961 2 All E.R. 688 and it was contended that the prosecution led no evidence to rebut the evidence of the appellant as to how his front off-side tyre came to be deflated, as it undoubtedly was after the accident. The learned Magistrate was of the view that it was deflated by the collision and it was submitted that there was no basis for this conclusion.

Spurge's case was brought to the notice of the learned Magistrate and he must have considered it.

In the end it seems to me that the question of what caused the tyre to deflate is of little relevance. On the appellant's own version he should have brought his car to a halt at an early stage. He had no business to be overtaking on a curve in the face of oncoming traffic with or without a deflating tyre - indeed, still less so if he realised that he was having trouble with his front off side tyre.

The findings of the learned Magistrate were clear. He accepted the prosecution version and that clearly demonstrated dangerous driving on the part of the appellant. The curve was a sharp one. There was ample evidence to support the learned Magistrate's conclusion.

Only one feature gave me some concern. In his reasons the learned Magistrate stated that he "was not convinced" that the appellant was telling the truth about the accident. This may suggest that the learned Magistrate was approaching his findings with a misconception as to the onus

and standard of proof. I cannot believe that, with his experience, he had any doubts on the question of the burden of proof. In my view this was merely an infelicitous expression which unconsciously crept into his reasons. There had earlier been a clear and unambiguous finding to the effect that he accepted the accounts of the two main prosecution witnesses and that he found them truthful. There had also been a clear finding to the effect that he did not believe the version given by the appellant.

Once the prosecution evidence is accepted without qualification there could be no other conclusion than that the appellant was guilty of the offence charged. This was essentially a matter for the presiding Magistrate.

As to sentence, this was a bad case of dangerous driving. The fine of $150.00 and 3 months disqualification was, if anything, on the lenient side.

The appeal against conviction and sentence is dismissed.

SIR JOHN SUMMERFIELD

20th June 1980.