8-11-71

Appeal 2/71 Regina

Vs.

GEORGE BUSH

8/11/71 Boxall for Appellant

Truman Bodden for Respondent

JUDGMENT

The first and second grounds of appeal challenge the learned Magistrate's finding of fact that the defendant was driving his vehicle on his right side of the road (he intended to deliver goods on a side road which leads off from his right side of the main road; that in so doing he put the driver of motor vehicle C.I. 1034 in a situation of peril, and to avoid a head on collision and possible serious injury or death, she was forced to take a certain course in an effort to preserve her life.

Sunshine Thompson's evidence was that the truck driven by defendant was coming towards her car on defendant's wrong side of the road (his right side). Seeing him coming she swung out from her left to get clear of him. He turned to his side of the road and caught her in the middle of the road and smashed her car. Police measurements were taken after these manoeuvres were executed. They found the point of impact was in the middle of road. Defendant's break marks support his applying his breaks when he was switching over to his correct side of the road and trying to avoid the defendant's car which he had put in peril by this manner of driving.

There was no material conflict in the prosecution evidence. There was amply evidence to support the learned Magistrate's findings.

Grounds three and four can also be dealt with together. An information for dangerous driving contrary to section 15 of the Motor Vehicle Law (Cap.106) was tried simultaneously with an information for driving without due care and attention contrary to section 17 of Cap. 106. The magistrate dismissed the information for dangerous driving and found the appellant guilty of driving without due consideration for other users of the road.

Objection was taken to the use of the words "due consideration" instead of the words "reasonable consideration" as used in the Statute. The Magistrate's attention was not called to this error at the trial. I am satisfied that it is a proper matter for the application of section 39 of the Justices of the Peace (Appeal Law) (Cap.27.)

Objection was also taken to the Magistrate's order dismissing the information of dangerous driving when section 16 of Cap.106 uses the phrase "not proved." There is no merit in this since Wilkinson on Road Traffic Offences (6th. Edition) comments at page 184 "If a charge of careless driving has been heard simultaneously with one of dangerous driving the Magistrate would be justified in dismissing the section 2 charge (dangerous driving) and convicting on the section 3 one at the end of the hearing." "Not proved" is a term of art in Scotts Law. I think that "dismissed"and"not proved" have the same meaning in relation to section 16 of Cap. 106.

Mr. Boxall for the appellant then argued that if a charge of careless driving had been heard simultaneously with a charge of dangerous driving and the charge of dangerous driving was dismissed the Magistrate must convict of careless driving and not of driving without reasonable care and attention for other users of the road. He must first dismiss the careless driving charge before he can convict of driving without reasonable consideration for other users of the road.

Passages from Wilkinson were quoted to me relating to Section 3(2) of the English Road Traffic Act 1960, which I do not consider to be relevant since that sub-section and the corresponding section 16 in Cap.106 have only the first three lines in common down to the words "not proved." Section 3(2) then specifies a procedure which does not obtain in the Cayman Islands.

On my interpretation of section 16 of Cap 106 the Learned Magistrate was correct in dismissing the dangerous driving charge and was then empowered to find the appellant guilty according to the evidence already heard of either driving without due care and attention or of driving without reasonable consideration for other persons using the road. The decision of the English Court of Appeal in R V Surrey Justices -- Ex Parte Witherick (1931) All England Report Reprint given by Avory J. at page 808 that section 12 of the Road Traffic Act 1930 creates two separate offences and therefore a conviction following on an information charging these two offences in the alternative is bad for duplicity should be confined to the actual point decided. I do not consider that it is applicable to proceedings under section 16 of the Motor Vehicle Law, although, without deciding the point, it may be relevant to the procedure and practice governing section 3(2) of the Road Traffic Act 1960.

There is no objection in the law of the Cayman Islands to the practice of the police joining a separate information under section 17 to an information under section 15.

In our less sophisticated community it has the advantage of inform informing defendants that in a suitable case a plea of guilty to a lesser offence under section 17 may be accepted on a plea of not guilty to an offence under section 15.

The failure of the Magistrate to dismiss the separate information for careless driving has not caused an injustice or been an embarrassment to the appellant. Section 16 reads "where a person is charged summarily with an offence against section 15 and the Magistrate is of the opinion that that offence is not proved, then the Magistrate may find him guilty of an offence against section 17." These words mean that the person has been in jeopardy under the section 16 procedure of a conviction under either limb of section 17. It is immaterial that a separate information for careless driving is on the file. If this appellant were to be later arraigned on the undismissed information a plea of autrefois convict must succeed.

The Appeal is dismissed.

(Sgd)G.J.Horsfall
8/11/71