

ST. LUCIA

MAGISTERIAL CRIMINAL APPEAL NO.5 of 1975

BETWEEN: CHRISTOPHER WILTD Appellant
AND
JOSEPH NOEL P.C.173 Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

1975, June 18 & October 13

J U D G M E N T

PETERKIN J.A., delivered the judgment of the Court:

On 6th March 1975 the appellant was convicted for driving motorcar 3757 along the John Compton Highway on 4th February 1975 without due care and attention, and was fined \$120.00. He now appeals against his conviction on the following grounds:

- "1. That the decision is altogether unwarranted by the evidence.
2. That the learned magistrate failed to direct himself as to the obligations and responsibilities of a motorist at a stop sign.
3. That the findings of the learned magistrate were against the weight of the evidence.
4. That the defendant is not guilty of the offence."

The accounts of the accident as given by the appellant and the driver of the other car 5659 are contradictory, but there are some facts which are not in dispute. The accident occurred at about 11.45 p.m. at a point near to the junction of the Peninsular Road with the John Compton Highway. There is a right hand bend in the Highway at this junction, as it continues towards Vide Bouteille, and the Peninsular Road merges into the Highway in a straight line from the left. Motorists travelling from Vide Bouteille and wishing to enter the Peninsular Road are neither required to turn left nor right, but because the Peninsular Road is approximately half the width of the Highway must veer to the right in order to enter that road. There is a stop sign directing motorists travelling on the Highway from Castries to stop and give way at the junction. The appellant was travelling from Vide Bouteille towards

the Peninsular Road while the driver of car 5659, Dr. Parris, was travelling from Castries towards Vide Bouteille. The two cars collided about 8 to 10 yards from the junction, and approximately in the middle of the Highway, after car 5659 had emerged from the junction. The Highway at that point is 32 feet wide. The right sides of both vehicles were damaged. The account given by Dr. Parris is best related by reference to his evidence:

"I had intended to turn right in the direction of Vide Bouteille. My indicator was indicating that I was turning right. I stopped at the junction of the John Compton Highway and the Peninsular Road. I could see nothing coming from my left. I could see that very clearly because there was an open space on my left, the football field. I looked to the right and I saw the lights of an approaching car in the distance. I was at a standstill when I saw the lights. The car was in the region of the McNamaras' house opposite the Barclays Bank club. There is a junction formed by the Peninsular Road and the Lanse Road. The distance between the junction of the John Compton Highway and Peninsular Road and the Lanse Road junction (both counsel agree) is between 100 and 150 yards. When I first saw the car it had not passed the Lanse Road junction. When I stopped at the junction I was at a standstill. After seeing the car approaching at that distance, I glanced to the left again and started to move off looking right. I went right out to my left in the Peninsular Road before turning. That part of the Peninsular Road to the left of the John Compton Highway is narrower than that to the right. As one leaves the junction and goes to the right, the road narrows slightly. I moved off straight and turned right. By the time I could straighten up the vehicle had moved from 1st to 2nd gear to move onwards, I realised that the approaching vehicle whose headlights were full on was approaching very fast. Minutes later I saw the approaching vehicle deviating sideways. It started to move from the left to the right. Things seemed to be happening so fast that at that point the car started to deviate from his side of the road to my side of the road. It started to do so at some point after the Lanse Road junction. I would say from 15 to 20 yards from the junction. This I am saying on the assumption

that the distance between the Lanse Road junction and the John Compton Highway and Peninsular junction is 100 to 150 yards. The deviation checked but later recommenced in my direction. And very soon afterwards I was hit. Before I was hit, I distinctly remembered trying to ditch the car on my left side. I had progressed about 8 to 9 yards from the junction when I was hit. When I say 8 to 10 yards it is from the point of the straightening up on my left side. The events immediately following the impact were not clear to me."

He stated the appellant's car was travelling very fast, and gave his opinion of the speed as in excess of 50 mph. P.C. Noel of the Traffic Department who investigated the accident stated in his evidence that if a car were to stop 174 feet from the point of impact that car would have been travelling at a speed of about 45 to 50 mph.

The appellant gave the following account in his evidence:

"I was driving from Vide Bouteille to Lunar Park. I was driving from the John Compton Highway to the Peninsular Road. I was driving home. I was tired. I wanted to go to bed. I was driving in a completely normal manner down to the Peninsular Road towards Lunar Park. It was a very bad night. It was very wet just after a rain storm. I know that junction with the John Compton Highway very well as I live in Lunar Park. At night I judge where the intersection is by looking at the lights on the right hand side of the road. And the reason why I do this is the lights end at that junction. The Capri that I was driving is a gear driven car not an automatic. And therefore as I neared the junction I changed down from 4th to 3rd gear. On this particular night as I was nearing the junction I saw the green mini car and since I had my lights full on and I could see him I knew that he could see me. Consequently I started to pull over as I neared the junction, to the right so that I could go straight on towards Lunar Park and I could change from 3rd to 4th gear. When I was very close to the junction the green mini pulled out and got half way across the road. I braked. And because of the wet road condition and the very short distance I skidded directly into the side of the mini car. I then skidded off the

road and onto the playing field."

When cross-examined he said:

"I had seen enough near accidents at that junction to know that it is not a safe junction. When I first saw the mini, I had just passed the Lanse Road turning. I would agree that it is about 100 yards from the junction of John Compton Highway and Peninsular Road to the Lanse Road junction. I really don't know whether it is nearer 150 yards than 100 yards. I was not far from the Lanse Road junction when I saw the mini. It could be that I was just 20 feet away from it. At that point when I was 20 feet from the Lanse Road junction, I could have seen the front third or half of the car."

The appellant denied that he was driving fast, and he gave his speed as 25 mph. He admitted, however, that his car had travelled a distance of 174 feet from the point of impact. It is conceded that the speed limit for that area is 15 mph.

One indisputable fact emerges from the evidence, namely, that when the appellant first saw car 5659 at the junction he was then over 100 yards away from it. His own evidence is that he had travelled a mere 20 feet beyond the Lanse Road and this road was conceded by both sides as being between 100-150 yards from the junction.

Learned counsel for the appellant submitted that the Laws of St. Lucia clearly indicate that a stop sign creates a statutory right of way, and that a statutory beneficiary of a right of way owes no duty whatsoever to a motorist who has violated the right of way. He referred the Court to the case of Joseph Eva Ltd. v Reeves (1938) 2 All E.R.115.

In this case the Court of Appeal considered the application of the principles of the law of negligence to crossings controlled by traffic-lights. The main proposition laid down is that the driver entering the crossing is entitled to assume that there is no traffic entering the crossing against the lights. At cross-roads thus lighted the result is aptly described by MacKinnon L.J. as follows:

"The result, if the prohibition of the red light is obeyed, is that one road is temporarily abolished as a thoroughfare, while the other exists as an open thoroughfare."

It was held, however, by the Court that even in these circumstances if he in fact saw traffic entering in disobedience to the lights, he ought to take all reasonable steps to avoid a collision.

In the instant case the appellant admitted having seen the other car when he was about 100 yards away from the junction, and therefore owed a duty of care to him as his neighbour.

Learned counsel then invited the Court to reverse the magistrate's findings of fact and submitted that they were more consistent with the appellant's version of the accident.

The learned magistrate was not concerned here with contributory negligence. He did not have to determine whether or not Dr. Parris was negligent. So long as he found the appellant negligent, it was his duty to convict. In his reasons for decision the learned magistrate made some sweeping statements, and, as learned counsel put it, appeared to legislate for that particular junction. But on a consideration of the whole of the evidence in the case and of his reasons for decision, there was nothing unreasonable in his accepting the evidence of Dr. Parris. The appellant stated that when he was very close to the junction the other car pulled out causing him to brake and skid, but the measurements show that the collision took place 26 feet from the junction and the damage to both cars was on their respective right sides. This would seem to indicate that car 5659 had already cleared the junction, and would support the evidence given by Dr. Parris in this regard. Further to this, the evidence of P.C. Noel, not denied, is that the appellant's car travelled a distance of 174 feet from the point of impact before coming to a stop. He then gave as his opinion that this would indicate a speed of about 45 - 50 mph at the time of the accident. Again this evidence would seem to substantiate that of Dr. Parris as to the appellant's speed. High speed alone is not evidence of negligence unless the particular conditions at the time preclude it. The appellant saw the other car when he was over 100 yards away from the junction, but did nothing to regulate his speed and manner of driving at that stage, although, in our view, the circumstances on that night demanded it. He was aware that the crossing was a dangerous one, and that to enter the Peninsular Road he would have to veer to his right. He was tired and he was driving at night on a rain-soaked road on which there were pools of water. These circumstances all called for extreme caution on his part. He failed in this regard because he had noticed the other car in time and had

failed in his duty to take all reasonably possible steps to avoid coming into collision with it, notwithstanding that the driver of the other car may himself have been negligent.

For these reasons the appeal is dismissed, and the conviction and order affirmed.

MAURICE DAVIS
CHIEF JUSTICE

E.L. ST. BERNARD
JUSTICE OF APPEAL

N. PETERKIN
JUSTICE OF APPEAL