

MONTserrat

IN THE COURT OF APPEAL

MCRAP 2011/001

BETWEEN:

REGINALD SIMON

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mde. Ola Mae Edwards

Chief Justice [Ag.]

The Hon. Mr. Francis Belle

Justice of Appeal [Ag.]

The Hon. Mr. Mario Michel

Justice of Appeal [Ag.]

Appearances:

Mr. Kharl Markham for the Appellant

Ms. Kathy-Ann Pyke, Director of Public Prosecutions for the Respondent

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2011: December 5.

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*Magisterial criminal appeal – Driving a motor vehicle without due care and attention – Inferences which the learned magistrate could reasonably have drawn having considered all the evidence in the case – Whether the magistrate could have properly reached a finding of guilt beyond reasonable doubt in the circumstances*

ORAL JUDGMENT

[1] **MICHEL, J.A. [AG.]:** This is a judgment of the Court. This is an appeal by a defendant against the decision of the magistrate, in which she found the defendant guilty of the offence of driving a motor vehicle on St. John's Public Road without due care and attention, contrary to section 5 of the **Road Traffic Act**.<sup>1</sup>

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<sup>1</sup> Cap 7.06 of the Revised Laws of Montserrat 2002.

- [2] Two witnesses were called by the prosecution in the case below, the investigating police officer and the owner of the rented car driven at the time by the appellant. None of the prosecution witnesses were witnesses to the incident giving rise to the charge against the appellant; they were only able to give evidence of what the appellant said had happened and what they saw in terms of damage to the vehicle and the path taken and damage caused by the vehicle after it left the St. John's Public Road.
- [3] At the conclusion of the prosecution's case, counsel for the appellant made a no case submission which the learned magistrate did not uphold. The appellant then gave evidence in his own defence.
- [4] The learned magistrate found the appellant guilty of the offence and fined him \$120.00 in default of which payment he would serve one week in prison.
- [5] In her Reasons for Decision, the learned magistrate essentially ruled that what happened after the vehicle driven by the appellant left the St. John's Public Road convinced her that the appellant had driven the motor vehicle on the St. John's Public Road without due care and attention.
- [6] The appellant appealed against his conviction on four grounds:<sup>2</sup>
- (i) That the decision is unreasonable or cannot be supported having regard to the evidence.
  - (ii) That the decision was erroneous in point of law.
  - (iii) That admissible evidence substantially affecting the merits of the case was rejected by the court.
  - (iv) That the judgment given was based on a wrong principle or was such that the court viewing the circumstances reasonably could not properly have so decided.
- [7] The learned magistrate's finding of guilt was founded on her determination<sup>3</sup> that, having considered all the evidence, the court cannot but prefer the evidence given

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<sup>2</sup> See p. 31 of the Record.

by the prosecution and she found that the appellant departed from the standard of driving which would be exercised by a reasonable, prudent and competent driver in all the circumstances of the case.

[8] The problem with this determination though, is that the only evidence of the prosecution which the learned magistrate could prefer over the evidence of the appellant is the prosecution's evidence of the nature of the damage to the vehicle and the path taken and damage inflicted by the vehicle when it left the St. John's Public Road. But that this constituted evidence of want of care by the appellant is only an inference that can be drawn by the learned magistrate and there are other inferences which the learned magistrate could reasonably have drawn and she ought to have drawn the inference most favorable to the appellant. And when the appellant did present in his evidence an alternative view of how the damage to the vehicle and other post-collision issues came about, then the magistrate could not have reached a finding of guilt against the appellant beyond reasonable doubt.

[9] The conviction of the appellant cannot therefore be sustained. The appeal is accordingly allowed and the conviction and sentence of the appellant are quashed.

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<sup>3</sup> Contained on p. 2 of her Reasons for Decision.