

NO 18/66 87

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL 18/66

BEFORE: The Hon. Mr. Justice Lewis, Presiding
 The Hon. Mr. Justice Henriques
 The Hon. Mr. Justice Moody

R. vs O R A S E M P E R

Mr. L. Wright for the Crown

Mr. P.J. Patterson for the appellant.

29th March, 1966.

MOODY, J.A.,

The appellant was tried and convicted on the 26th of November, 1965, on an Information charging him with dangerous driving and fined £17 or one month and his driver's licence to be endorsed with the particulars of the conviction. He was also convicted on a second Information charging him with failure to produce the insurance certificate and fined £7 or two weeks hard labour.

The circumstances arise out of an accident taking place on Maxfield Avenue. The case for the prosecution was that Walter Bernard of the Public Health Department was emerging from premises 124 Maxfield Avenue driving a Vauxhall motor car. As he came out, he said that he observed at a distance of about one hundred yards away from where he was a motor car. He then heard a screeching of tyres in that vicinity and this car came along at a speed in his estimation to be about 60 miles or 50 miles an hour, as he said in cross-examination, and when it was within about 50 feet from him, it made a complete turn and faced northwards towards the direction from whence it had come. He said it continued in that manner until it reached to where he was. He was stationary at the time and he said the rear of the car bashed into the front right fender of his car.

/The evidence.....

The evidence of Bernard was supported by other witnesses who said they observed the manoeuvres performed by this car.

The appellant in his defence said that he had not broken the stop light, as alleged by one of the witnesses for the prosecution, but in fact he stopped at the stop sign, which was red when he approached it, and that after it turned to green, he proceeded. He said he was about one hundred yards up from the gate of 124 Maxfield Avenue, and there was a slight bend in the road to the right, and he saw a Vauxhall creeping out and stopped. The front bumper faced the street and half of the car was on the road and half on the sidewalk and he thought it would stop there. He blew his horn, the whole road was clear, the car came across the road and stopped, and he stepped on the brake. His car swung to its left going at about 25 m.p.h. Previously to that he had been travelling at about 30 - 35 m.p.h., and he was about 25 yards from the Vauxhall when he applied his brakes. He said the car continued and crashed into the Vauxhall, and after the impact, he removed his car.

Acting Corporal Williams investigated the accident and called upon the driver, the appellant to produce his driver's licence and the insurance certificate. The appellant on the following day produced at the Elletson Road Police Station the driver's licence, but failed to produce the insurance certificate. In his defence, he said he had not been asked so to do.

The learned judge of the Traffic Court found the appellant guilty on both these Informations, and on appeal before us, learned Counsel for the appellant urged that the learned Judge of the Traffic Court ought not to have accepted the case for the prosecution, as there were numerous inconsistencies or discrepancies in the evidence given by - so to speak - the principal witness for the prosecution, namely, Walter Bernard, and he pointed these out in relation to whether measurements were taken or not, and to what in fact were

the measurements...

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the measurements or the distances involved, and then he urged upon us that having regard to the provision of Section 23(1) of Chapter 346 - the Dangerous Driving Section - that the prosecution ought to have produced some evidence to show that driving at the speed of 30 or 35 m.p.h., as the appellant alleges he was driving, there were circumstances obtaining which would have rendered it dangerous.

It is clear that the judge of the Traffic Court did not rely solely on the element of speed in coming to his conclusion. The witnesses had given evidence of the fact of the appellant breaking the stop lights and the speed of the vehicle and the manoeuvre that the vehicle executed before the crash. In our view these are all questions of fact which the learned Judge of the Traffic Court was entitled to accept as evidence for the prosecution, which in fact he did, and to reject that given by the appellant.

We are not able to say that on the evidence before us that these discrepancies, as have been pointed out to us, were so many or so material and vital as to warrant us interfering with the judgment of the learned judge of the Traffic Court. For these reasons the appeals are dismissed and the convictions affirmed.

L. J. Jones