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# JAMAICA

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 119/02**

**COR: THE HON. MR. JUSTICE DOWNER, J.A.**
**THE HON. MR. JUSTICE WALKER, J.A.**
**THE HON. MR. JUSTICE SMITH, J.A.**

**R v URIAH BROWN**

**Delano Harrison, Q.C.** for the Applicant
**Suzette Rogers** for the Crown

**March 4,6 and 7, 2003**

**WALKER, J.A.:**

On June 7, 2002 after a trial in the St. Ann Circuit Court the applicant, a Sergeant of Police in the Jamaica Constabulary Force, was convicted on two counts of an indictment charging him with manslaughter. Count 1 concerned the death of Mark Williams and Count 2 that of Gregory Vassell. Following his convictions, on June 13, 2002 concurrent sentences of two years at hard labour were imposed on the applicant. He now applies to this court for leave to appeal those convictions and sentences.

The case for the Crown rested mainly on the evidence of Michael McKennon. He was the driver of a Ford Ranger pick-up at the time of this

fatal accident. That evidence was rehearsed by the trial judge in the following terms:

> "He is driving, he says, and he is on the Llandovery main road going to Kingston. A road that probably you as jurors from this parish may be well familiar with it, but this is what he told you. Driving one afternoon about 12:15, and he is driving his company vehicle. He said he works with AJAS and this was Ford Ranger pick up, left-hand drive vehicle, and he was driving on his left hand side of the road as he proceeded toward St. Ann's Bay.
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> He said there were vehicles behind him in a line travelling behind him but there was no vehicle ahead, immediately in front of him. He tells you that as he is driving he sees this vehicle overtaking the line of traffic from behind him, and when the vehicle came alongside him, lo and behold it's a police vehicle, and at that moment in time there was coming from the opposite direction two vehicles, a Starlet and a Nissan. They were behind one another. The Starlet was ahead and he tells you that at that moment when the police vehicle came alongside him because of the situation which existed at that time, the police vehicle made a contact with him and then crashed into the oncoming Nissan, because the Starlet had gone on the soft shoulder but the Nissan was there, and the police vehicle crashed into it causing him now, Mr. McKennon, to hit up in the rear of the police vehicle after he had collided with the Nissan motor car.
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> You have his evidence also where he tells you that when he came out of his vehicle it was close to the left bank where he was travelling along, and that he rushed towards the motor vehicle because the Nissan was now on fire. He told you that he went to rescue the persons in the police vehicle".

The two deceased persons, Mark Williams and Gregory Vassell, were the occupants of the Nissan motor car. Both of them perished in their motor car which became engulfed in flames following the collision. The police vehicle which was being driven by the applicant and in which his witness, Inspector Christie, was a passenger also caught fire as a result of the collision. Luckily for them they were rescued in time and their lives saved.

The case for the applicant consisted of the evidence of the applicant himself and that of his witness, Inspector Christie. Here is how the learned trial judge recounted the evidence of the applicant:

> "I live at Greater Portmore. I am a policeman. Recall Saturday the 14th of March, 2000. I was coming from Montego Bay. I was travelling in a marked police car. I was the driver of vehicle and I was accompanied by Sergeant Trevor Christie of the Jamaica Police Academy. We were in plain clothes. I was travelling on the Llandovery main road, at about 55 to 60 kilometres. I was at the front of the line of traffic. As I approached the middle of the hill, there was a line of traffic, a white Starlet car approached over the brow of the hill. After overtaking a line of traffic, the Starlet cut suddenly in front of the car that was at front of that line of traffic. He continued on the road surface.
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> A grey Nissan motorcar, which was following close behind the Starlet also came over the hill, overtook the line of traffic and cut suddenly in front of the last car it overtook. I saw when the Nissan went to the extreme left, skidded and cut across the road right in front of my car. When I saw the Nissan heading across the road, I held the steering wheel firmly, held on my brakes, there was nothing else I could do. The car

> slammed in the left side of the Nissan motor car. Immediately after that impact, I heard and felt a bang in the rear of my motor car.
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> I woke up at the Kingston Public Hospital the Sunday afternoon, with several fractures and burns to about 30 percent of my body. The question was asked how was your vehicle positioned from the left bang? He said no more than four feet from the left. What was the position of your vehicle at the time of impact, straight in the road? Straight in the road. He says it is not true that the accident occurred on the right as you proceed to St. Ann's Bay."

The evidence of Inspector Christie in large measure corroborated the evidence of the applicant as to the circumstances that led to the accident. In particular, he said that the Nissan motor car and another car were both driven into the police vehicle, and not the other way around. There was, however, a divergence in the evidence given by these two witnesses in that Christie did not see, as the applicant said he saw, two vehicles coming in the opposite direction overtake a line of traffic immediately before the accident occurred.

On this application for leave to appeal the first complaint of the applicant is that the learned trial judge misdirected the jury as to the definition of the offence of manslaughter. Mr. Harrison, Q.C. argued that the trial judge's use of the words "reckless" and "recklessness" in defining the offence served only to confuse the jury since it was used interchangeably with negligence and gross negligence. It was submitted

that the test to be applied is that of gross negligence as was affirmed in ***R v Adomako*** [1995] 1 A.C 171. In that case it was held that:

> "In cases of manslaughter by criminal negligence involving a breach of duty the ordinary principles of the law of negligence applied to ascertain whether the defendant had been in breach of a duty of care towards the victim; that on the establishment of such breach of duty the next question was whether it caused the death of the victim and if so, whether it should be characterized as gross negligence and therefore a crime..."

Although Mr. Harrison did not say so in so many words, we presume he was asserting that this may have led to a miscarriage of justice. We must, therefore, look to see what the judge in fact said. He directed the jury in this way:

> "The indictment charges this accused man with the offence of manslaughter. So let me tell you what in law is Manslaughter. Manslaughter is an unlawful and dangerous act committed against the person of another, without the intention to kill or cause serious bodily injury and which results in death.
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> When you are driving a motor vehicle, for it to be manslaughter there must be a very high degree of negligence on the part of the driver of the motor vehicle involved. You the jury will have to find that at the material time the driving of the accused man showed a reckless, wanton and total disregard for the life and safety of other persons on the road.
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> To amount to motor manslaughter the prosecution must prove these five ingredients. One, that the accused man was the driver of the motor vehicle. Two, that the accused man owed

> a duty of care to the deceased persons who were in the other vehicle. Three, that the accused man failed to take care resulting in the death of these two persons. Four, that death was a direct and immediate result of the accused man's failure to take care, and fifthly, that the failure to take care was of a very high degree amounting to recklessness".

Finally the judge said:

> "So finally, Madam Foreman and members of the jury, I will give you my final charge to go to the Jury room. If you, the Jury, are satisfied that the negligence that the prosecution has adduced in this case is of a high degree and of such a character that any reasonable driver endowed with ordinary road sense and in full possession of his faculties would realize, if he thought at all, that by driving in the manner which caused the fatal accident he was without lawful excuse, incurring a high degree of recklessness, causing substantial personal injury to others, then on the evidence of the prosecution, the prosecution is saying the crime of manslaughter would be established, this high degree of recklessness on the part of the accused man. If you find that he drove in such a manner as I have said before, let me remind you of the legal meaning there in law.
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> If he drove with a very high degree of negligence; if he drove and showed a reckless, wanton and total disregard for life and safety for someone on the road, the prosecution is saying they would have satisfied you to the extent that you feel sure that this accused man is guilty of manslaughter."

In our opinion this was a proper definition of the offence of motor manslaughter. The direction of the learned trial judge was in harmony with the model direction of Lord Atkin in ***Andrews v DPP*** [1937] 26

Cr. App. R. 34, and approved by their Lordships' Board in the Privy Council case of ***Kong Cheuk Kwan v R*** [1986] 82 Cr. App. R.18. Lord Roskill, in delivering the judgment of the Board in ***Kong***; said at p .26:

> "Though Lord Atkin in his speech in ***Andrews v Director of Public Prosecutions*** [1937] 26 Cr. App. R. 34 [1937] A.C. 576 did not disapprove of what was there said, he clearly thought, (at p.47 and p. 583), that it was better to use the word "reckless" rather than to add to the word "negligence" various possible vituperative epithets. Their Lordships respectfully agree. Indeed they further respectfully agree with the comment made by Watkins LJ. in delivering the judgment of the Court of Appeal (Criminal Division) in ***Seymour*** (1983) 76 Cr. App. R. 211, 216:
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> > 'We have to say that the law as it stands compels us to reject Mr. Connell's persuasive submissions and to hold that the judge's directions were correct, although we are of the view that it is no longer necessary or helpful to make reference to compensation and negligence. The ***Lawrence*** direction on recklessness is comprehensive and of general application to all offences, including manslaughter involving the driving of motor vehicles recklessly and should be given to juries without in any being diluted. Whether a driver at the material time was conscious of the risk he was running or gave no thought to its existence, is a matter which affects punishment for which purposes the judge will have to decide, if he can, giving the benefit of doubt to the convicted person, in which state of mind that person had driven at the material time'. "

In ***R v Adomako*** (supra) which was relied on to support the applicant's contention, Lord Mackay of Clashfern L.C. said at pages 188- 189:

> "In cases of manslaughter by criminal negligence involving a breach of duty, it is a sufficient direction to the jury to adopt the gross negligence test set out in the present case following ***Rex v Bateman*** 19 Cr. App. R. 8 and ***Andrews v D.P.P*** [1937] A.C. 576 and that it is not necessary to refer to the definition of recklessness in ***Reg. v. Lawrence*** [1982] AC 510, although it is perfectly open to the trial judge to use the word "reckless" in the ordinary meaning as part of his exposition of the law if he deems it appropriate in the circumstances of the particular case". (Emphasis mine)

Furthermore, in the instant case the judge directed the jury in terms which were similar to a direction of which this court expressly approved in ***R v Rhone Warren SCCA*** No. 78/1999 delivered on February 23, 2000. In delivering the judgment of that court ( Forte P, Walker, Langrin, JJA) Forte P, had occasion to describe as "admirable" a direction which was given to the jury in the following terms:

> "If you the jury are satisfied that the negligence proved is of a very high degree and of such a character that any reasonable driver endowed with ordinary road sense and in full possession of his faculties would realize if he thought at all that by driving in the manner which caused the fatal accident he was without lawful excuse incurring in a high degree the risk of causing substantial personal injury to others, then the crime of manslaughter would be established."

For these reasons we find no merit in this ground of appeal.

Secondly, it was argued on behalf of the applicant that the jury's verdicts are unreasonable and cannot be supported having regard to the evidence. In support of this complaint Mr. Harrison was at great pains in an attempt to show that the evidence of the principal prosecution witness, Mr. McKennon, was not capable of belief. The gist of counsel's submission was that the evidence for the defence adduced through the applicant and his witness, Inspector Christie, was more consistent with reality and the truth especially as regards the relative positions in which the vehicles ended up after the collision and the areas of damage to Mr. McKennon's vehicle and the police vehicle.

A perusal of the record discloses that the cases for the prosecution and the defence were diametrically opposed to each other where the circumstances of the accident were concerned. This is how the trial judge directed the jury, having recounted Mr. McKennon's evidence in this regard. The judge said:

> "First of all, you the Jury will have to decide whether or not Mr. McKennon was in a position that he said he was that afternoon. Was he at the head of the line of traffic? Was there a vehicle overtaking the line coming up and come alongside him? Those are matters that you will have to decide. So do you accept that Mr. McKennon was driving on the left as he proceeded towards Kingston? Do you accept his evidence that there were five vehicles behind him that he could make out? Do you accept his evidence that there were two vehicles going in the opposite direction, a Starlet and a Nissan motor car? Do you accept his evidence that

the Starlet was in front? Do you accept his evidence that the police car overtook the line of traffic that was going toward St. Ann's Bay direction? Do you accept his evidence that the police car overtook him at some one hundred twenty kilometres per hour as against what he told you he was going, somewhere in the region of seventy-six kilometres per hour?

Because, Madam Foreman and members of the jury, it is a notorious fact that you can take notice of the speed limit. The law says that in built up areas the speed limit is fifty kilometres per hour. When you convert that it works out to thirty miles per hour, I mean thirty miles per hour, and eighty kilometres works out to fifty miles an hour .

So if you accept Mr. McKennon's evidence he is travelling within the bounds and the limits of the law. He says it is seventy-six or thereabouts kilometres per hour. He tells you that this police vehicle passed him at a hundred and twenty kilometres per hour. This is not miles per hour, kilometres. So if eighty kilometres equals fifty miles and forty, would put the policeman driving somewhere at sixty or so miles per hour, and he said he passed him.

Now, do you accept Mr. McKennon when he told you that the policeman came alongside him, and as the police vehicle came alongside him the Starlet swerved to its left? Do you accept Mr. Kennon's evidence that at the time when he said the police car came alongside him, the police car was now occupying the right side of the road, that is, not his left that he is supposed to travel, because in Jamaica we still drive on the left. That law has not changed yet. What Mr. McKennon is saying is that as a result of him coming alongside him he was no longer driving on his left, the policeman, but he was on the right. Do you accept that? Do you accept that because he was driving on the right the

> Toyota Starlet had to swerve and go on the soft shoulder?
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> You are coming along and you saw somebody on your side of the road. What are you going to do? So, Mr. McKennon tells you that the Starlet went over more on the soft shoulder . Swerve over there. Mr. McKennon tells you also, that the police car now, is colliding with the Nissan before it clear his Ford Ranger, motor vehicle he is driving and by the impact hitting his car, the back of the Police car to his vehicle in the region of the right side of the bonnet, right front bumper, grill and right head lamp. And he said when the Nissan and the Police car halted, there about stopping, this is the time they stop. When the two vehicles stop now, the Ranger ran in the back of the car.
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> But , let us look at what Mr. McKennon says further in his evidence. He says that the Nissan motor car was at a bit of an angle when the police car collided with it. He say it was when the Nissan brake suddenly that it picked up a skid and turned sideways. He said the Nissan had picked up a skid near to the left soft shoulder. And after the Nissan motorcar picked up the skid near the soft shoulder, that is when the police car collided with the Nissan. Because, you have the exhibits to take into the jury room, but if you get the picture, Madam Foreman and members of the jury, you are going to Kingston or to Montego Bay, Starlet pass, go on the soft shoulder; Nissan already swerve to go on soft shoulder but pick up a skid at the point where they collided; left side of the Nissan they pick up a skid."

Later on in his summation the judge reminded the jury of the defence's version of the circumstances of the accident mainly in terms as have already been quoted in this judgment.

We think that in this way the evidence on both sides was fairly put before the jury for their consideration. In the final analysis, having themselves seen and heard all the witnesses on both sides, and also viewed diagrams drawn by Mr. McKennon showing the position of the vehicles after the impact, the jury by their verdicts obviously accepted the prosecution's version of the collision and rejected the version put forward by the defence. We think that the jury were justified on the evidence in so doing and find no merit in this ground of appeal.

Next it was submitted on behalf of the applicant that the trial judge's directions on the matter of credibility were deficient in that they were given in such a way as was likely to lead the jury to infer that the trial judge had, himself, taken a position adverse to the credit-worthiness of the applicant and his witness, particularly in view of inconsistent statements which each of them was shown to have made. We have carefully examined the judge's directions on the issue of the credibility of the several witnesses in the case, including the applicant and his witness. We do not find that these directions were deficient, nor that they were slanted in the way Mr. Harrison suggests. On the contrary we think that the judge was scrupulously fair and directed the jury adequately and correctly on this aspect of the matter.

Lastly, it was argued that the sentence imposed on the applicant was manifestly harsh and excessive. On the finding of the jury as

reflected in their verdicts the applicant was guilty of an egregious piece of reckless driving on the public road which resulted in the fiery death of not one, but two innocent persons. For this type of offence the law prescribes a maximum sentence of life imprisonment. Having taken into account all the relevant considerations as appears from the transcript of these proceedings and having, as he expressly said, agonized over the matter the trial judge imposed concurrent sentences of two years at hard labour. We see no reason to interfere with those sentences.

Accordingly, in the judgment of the court we refused this application for leave to appeal and ordered that the applicant's sentences should commence as from September 13, 2002.