

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION**

APPEAL SIDE

MC Cr App. No. 0008 of 2021

BETWEEN

RANDOLPH NEWTON

APPELLANT

AND

THE COMMISSIONER OF POLICE

RESPONDENT

Before: The Honourable Mr. Justice Gregory Hilton

Appearances: Wilver Deleveaux for the Appellant
Royanne Forbes for the Respondent

Hearing Date: 13th November 2024

D E C I S I O N

[Criminal/ Traffic Appeal – Driving without Due Care and Attention – Police
Officer driving to an emergency – Duty to drive carefully.]

1. The Appellant Randolph Newton was charged in the Magistrate Court with Driving without Due Care and Attention, Contrary to Section 46 of the Road Traffic Act Chapter 220; in respect to a Traffic accident that occurred on Monday, 9th November 2020 sometime after 7pm at the traffic light intersection of Thompson Boulevard and Big Pond Highway.
2. After a trial in the Magistrate Court the Appellant was convicted on 1st September 2021 and cautioned.
3. The Appellant appealed his conviction and filed seven (7) grounds of Appeal listed below as follows:
 - i. That the oral evidence of a video recording was wrongly admitted without producing such video for the Court and/or the Appellant to view and examine;
 - ii. That the conviction was erroneous in point of law with regards to Regulation 22 (1)(h) of the Road Traffic Regulations in that virtual complainant Marlon Briscoe failed to remain stationary upon hearing the police siren;
 - iii. That some specific illegality or irregularity, other than hereinbefore mentioned, substantially affecting the merits of the case was committed in the course of the trial in that the Learned trial Magistrate was wrong to base his decision as to witnesses held a high-ranking position that the witness was credible.
 - iv. That having regard to conflicting evidence by two of the Respondents witnesses PC. Dean and Assistant Superintendent Stubbs on the sequence of the traffic light;
 - v. That the verdict was unreasonable or could not be supported having regard to the evidence that there were no measurements taken of the

area, no sketch or diagram of the position of the vehicles involved in the accident produced and there was no point of impact established of the accident;

- vi. That the verdict was unreasonable or could not be supported having regard to the evidence that the time frame in the investigating officer's report conflicts as to when statements were recorded under caution and further that no video footage relied on was ever produced into evidence;
- vii. That under all the circumstances of the case, the verdict is unsafe or unsatisfactory.

4. The Respondent has challenged the Appellant's appeal grounds as being without merit and submitted that the Magistrate's decision was reasonable having regard to all of the evidence and that there were no errors in point of law committed by the Magistrate.

5. The 28 paragraph decision of the Magistrate has been reviewed by me and paragraph 1 and the concluding paragraphs 22-28 are set out here below:

Para. 1. This is an unusual case as the Defendant is a Police Officer who was responding to an emergency call when the incident in question occurred. Sometime after 7:00pm on Monday, November 9, 2020, Police Corporal 2012 Randolph Newton (the Defendant) was on mobile patrol in a marked police cruiser when Police Control Room informed him that a police officer urgently needed assistance. As a result of this information, the Defendant turned on the siren of the police cruiser he was driving and proceeded to drive to the location of the distressed officer. The Defendant headed south along Thompson Blvd. While

crossing the traffic light at the intersection of Thompson Blvd and Big Pond Highway, the Defendant collided with a vehicle heading west across the intersection driven by Marlon Briscoe.

Para. 22. I find all the Prosecution's witnesses to be credible and honest. The Prosecution's evidence in totality has led me to conclude that the Defendant drove out of his lane and ran the red light at the intersection of Big Pond Highway and Thompson Blvd.

Para. 23. The Defendant, in my view, was not a credible witness and was dishonest in his testimony to this Court. In addition, the Defendant and his attorney seemed to be of the opinion that because the Defendant was responding to an emergency while making use of the siren and foghorn, it was only incumbent on MB to drive with due care by pulling to the side of the road to avoid the accident. I disagree.

Para. 24. Relying upon *R v Bannister* and *Purdue*, I am of the opinion that the Defendant still had a duty to drive with due care and attention while proceeding to assist the distressed officer. The Defendant had a duty to make sure his way was clear before proceeding across the intersection while driving against the flow of traffic. The Defendant breached this duty by driving against the flow of traffic, running the red light, and crossing the intersection before making sure his way was clear. To paraphrase words from *May LJ* in *Perdue*, the Defendant could not be sure that MB saw his vehicle approaching the intersection and that in the circumstances the Defendant had crossed the intersection at a speed that was excessive and negligent.

Para. 25. The Defendant claims that he never left his lane and never drove against the flow of traffic, and he never ran the red light. This claim is contrary to what the other witnesses were saying. It must be noted that the CS was not on active duty when he observed the Defendant's driving. CS stated, and I accept that he was driving south of Thompson Blvd and stopped at the red light at the intersection in question. CS stated that he observed the Defendant driving against the

flow of traffic, and he observed the Defendant running the red light, which led to the accident. PD corroborated this testimony by stating he viewed the video recording that not only showed the Defendant driving against the flow of traffic shortly before the accident, but he also saw south travelling vehicles at the stop (indicating that their light was red) I commend CS and PD in this regard as it is not every day when we see officers testify against a fellow officer in criminal matters.

Para. 26. In determining whether a defendant departed from the standard of a reasonable competent, and prudent driver in the circumstances, the Court will need to consider all the factual circumstances related to the incident and determine evidence of carelessness. I will have to ask whether the Defendant was exercising the degree of care and attention that a reasonable and prudent driver would exercise in the circumstances. Could a reasonable driver have avoided the accident?

Para. 27. In considering the factual circumstances and the evidence and to answer the question posed in *Idufo'oa v R [1982] SILR 55 Daly CJ*, I find that the Defendant departed from the standard of a reasonable, competent, and prudent driver in the circumstances.

Conclusion

Para. 28. Considering the preceding authorities and the evidence before this Court, I have determined that the Prosecution has proven its case beyond a reasonable doubt. In the premises, the Defendant is convicted of the charge of driving without due care and attention and is strongly cautioned to drive more carefully in the future.

6. I have considered the grounds filed by the Appellant and the written submissions of Counsel for the Appellant and the written submissions of Counsel for the Respondent.

7. With respect to Ground One. The sworn oral evidence of what the witness saw on a video recording was properly accepted by the Magistrate notwithstanding that the video recording itself was unable to be produced before the court as it had been inadvertently deleted. The trial was not made unfair by the unavailability to have the actual video recording produced.
8. With respect to Ground two: I do not find any merit in this ground. While it is a duty of drivers to make way for emergency vehicles by perhaps pulling to the side or remaining stationary – there is also a concomitant duty for the driver of the emergency vehicle to drive with appropriate caution and care in responding to an emergency. I accept the reasoning of the learned Magistrate as outlined in paragraph 17 of his decision where he stated viz.:

Para. 17. “The Attorney of the Defendant states that MB caused the accident by failing to immediately pull to the side once the officer was using the siren and foghorns. If I accept that submission fully then this implies that the police have no duty to drive carefully once they are using their sirens and foghorns. I reject this submission. While I agree that upon hearing the siren members of the public should pull to the side, I will add that it is still incumbent on the police to drive with due care and attention and to ensure that the way is clear. The use of the siren does not absolve the police from that responsibility. The cases of *R v Bannister [2009] EWCA Crim 1571* and *Purdue v Devon Fire and Rescue Services [2002] EWCA Civ 1538* are also instructive....”

9. With respect to ground three, there is also no merit in this ground as the Magistrate found that the Prosecution witnesses were credible and truthful and that in his view the Appellant was dishonest and not credible in his testimony. The learned Magistrate had the advantage of seeing and hearing the witnesses and his decision as to who and what he believed cannot be challenged on appeal.

10. Grounds four, five, six and seven are likewise without merit as they relate to findings of fact by the Magistrate on the evidence adduced at the trial.
11. I do not find that the decision of the learned Magistrate to be erroneous on any point of law and neither do I find that the Appellant's conviction to be unsafe or unsatisfactory.
12. The result is that this appeal is dismissed. The conviction of the Appellant is affirmed.

Dated this 12th day of February A.D. 2025.