

COMMONWEALTH OF THE BAHAMAS

2025/APP/mag/00021

IN THE SUPREME COURT

APPEALS DIVISION

BETWEEN

MITCHELL POITIER

Appellant

AND

COMMISSIONER OF POLICE

Respondent

Before: The Honourable Madam Justice Joyann Ferguson

Appearances: Mr. Vincent Wallace-Whitfield of Counsel for the Appellant
Mrs. Karine McVean of Counsel of Counsel for the Respondent

Hearing Date:

DECISION

Traffic Accident- Section 46 of Road Traffic Act- Due care and attention- Standard of Proof-Locus in quo

Ferguson J.

- [1]. This is an appeal by Mitchell Poitier ("the Appellant") against his conviction in the Magistrate's Court at New Bight, Cat Island, on 8th October 2025 for the offence of Driving without Due Care and Attention contrary to **section 46 of the Road Traffic Act, Chapter 220**.
- [2]. The particulars of the charge were that on 9th April 2025, while driving a green Kia Soul on Queen's Highway in the settlement of New Bight, Cat Island, the Appellant drove without due care and attention.
- [3]. Following a trial before the then Chief Magistrate, His Worship Roberto Reckley (as he then was). The Appellant was convicted and fined \$150.00. The Magistrate's written decision is dated 8th October 2025. The Notice of Appeal was filed on 15th October, 2025.

[4].The Appellant challenges both the legal and factual basis of that conviction. His original grounds contend, broadly, that the Magistrate erred in finding that:

- a. The Appellants manner of driving caused the incident involving Mr. Kevin Brown;
- b. That the evidence did not prove beyond a reasonable doubt that he drove without due care and attention and presumably caused the dangerous situation to occur;
- c. That the Magistrate failed to properly consider the condition of Mr. Brown's vehicle and brakes;
- d. That the decision was against the weight of the evidence; and
- e. That the judgment was otherwise bad in law.

[5].By supplemental written submissions the Appellant advanced grounds concerning the absence of the original notes of evidence and the completeness of the appellate record. In particular, he relies upon Section 242 of the Criminal Procedure Code and submits that the absence of the Magistrate's notes materially impairs his ability to challenge the conviction and this Court's ability properly to review it.

[6].I have carefully considered the Appellant's written submissions dated 23 April 2026, his supplemental written submissions. I have also considered the Respondent's submissions dated 9 September 2026, the Magistrate's written decision and the authorities relied upon by both parties.

Law and Analysis

[7].Appeals from the Magistrates' Courts in criminal matters are governed by **Part IX of the Criminal Procedure Code, Chapter 91.**

Section 242 provides that,

On an appeal by motion, an appellant who has served notice on the Magistrate's Court of his intention to appeal shall be entitled to receive with all convenient speed a copy of the evidence taken by the Court in the case, and also a copy of the conviction, order or judgment made or given.

[8].**Section 244** further provides that

On an appeal by motion, unless the court considers the justice of the case requires a re-hearing, the appellant shall begin, and, unless he satisfies the

court that it is necessary to call on the respondent, the conviction, order or judgment shall be confirmed

[9]. **Section 246** expressly authorises the Court by stating that

On an appeal by motion the court may draw inferences of fact from the evidence given before the magistrate's court, and, subject to due notice having been given as hereinbefore mentioned, may hear any further evidence tendered by the appellant, and may take and admit, if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law..

[10]. Lastly, **Section 248** empowers the Court, upon hearing the appeal, to confirm, reverse, vary or modify the decision of the Magistrate's Court, remit the matter with the opinion of the Court thereon, or make such other order as it considers just.

[11]. Accordingly, this Court may examine both the factual and legal foundation of the conviction. That jurisdiction does not, however, require this Court to disregard the advantage enjoyed by the judicial officer who saw and heard the witnesses.

Appellate treatment of findings of fact

[12]. The established approach to appellate review of findings of fact is found in *Watt (or Thomas) v Thomas* [1947] AC 484. The principle is that where a question of fact has been tried by a judge who has seen and heard the witnesses, an appellate Court should not lightly substitute a different conclusion merely upon the printed record. Intervention is nevertheless appropriate where the trial judge has materially misdirected himself, failed to make proper use of the advantage of seeing and hearing the witnesses, failed to appreciate the weight or bearing of material circumstances, or otherwise gone plainly wrong.

[13]. The principle in *Watt (or Thomas) v Thomas* has also been applied by the Court of Appeal of The Bahamas. It is particularly relevant where an appeal invites the appellate court to revisit questions of credibility and the weight to be attached to oral evidence.

[14]. Deference is not abdication. If a material contradiction has been overlooked, relevant evidence ignored, or a conclusion reached which the evidence cannot reasonably sustain, this Court must intervene. The mere existence of conflicting

testimony, however, does not of itself establish appellate error. The reconciliation of conflicts in oral evidence is a central function of the tribunal of fact.

The Offence

[15].Section 46 of the **Road Traffic Act, Chapter 220**, provides that

If any person drives a vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable on summary conviction to the penalty prescribed by that section.

[16].Counsel referred to **Adrian Jones v Crown Prosecution Service & Anor** [2019] EWHC 2826 (Admin). That case considered the English statutory offence of careless driving. Although the English legislation contains an express statutory definition which is not reproduced in section 46 of the Bahamian Act, the decision is useful for the limited proposition that the focus of careless driving is upon the manner or way in which the defendant drove, rather than upon the mere fact that an accident occurred.

[17].The issue in this appeal is therefore not simply whether Mr. Brown's vehicle left the road or sustained damage. It is whether, on the evidence before the Magistrate, the Prosecution proved beyond reasonable doubt that the Appellant's manner of entering and traversing the roadway constituted driving without due care and attention.

The evidence before the Magistrate

[18].The Magistrate's written decision is detailed. It identifies the witnesses called by the prosecution, the evidence of the Appellant and his witness, material portions of the cross-examination, the issues requiring determination, the statutory provision relied upon and the Magistrate's findings.

[19].The prosecution called Mr. Kevin Brown, Woman Sergeant 3073 Denise Turner-Rolle and Mr. Jason Kevin Stubbs. The Appellant gave sworn evidence and called Ms. Cedell Hunter. A sketch and photographs taken during the investigation were admitted into evidence.

[20].The Prosecution case, as recorded by the Magistrate, was that Mr. Brown was travelling along Queen's Highway when the Appellant proceeded from the parking area in the vicinity of Gilbert's Store into or across the roadway. Brown maintained

that the Appellant's vehicle entered his path and that he took evasive action to avoid a collision.

[21].Mr. Stubbs, who was travelling as a passenger in Brown's vehicle, also placed the Appellant's vehicle in the roadway and described Brown taking evasive action. The Magistrate recorded Stubbs as saying, in substance, that after they came around the curve the Appellant had pulled into the road and Brown had insufficient time to brake in the ordinary course.

[22].The Appellant's account was that he looked to his right and then to his left before proceeding across the road; that he saw no vehicle; and that by the time he heard what he described as a rumbling sound he had already traversed the roadway into the apartment complex.

[23].The Magistrate in his reasoning placed particular importance on the Appellants testimony concerning his lookout before entering and crossing the roadway. The Magistrate found that the Appellant looked right, then left, but proceeded without looking right again immediately before entering the path from which Brown was approaching.

[24].The Magistrate found that Brown had the right of way; that there was no actual collision between the two vehicles; but that the Appellant entered and proceeded across the roadway without exercising the degree of observation and care required in the circumstances, thereby causing Brown to take evasive action.

The Alleged Inconsistencies

[25].The Appellant's case is directed to inconsistencies between the evidence of Brown and Stubbs. The Appellant submits *inter alia*, that Brown described the Appellant as suddenly emerging and stopping or remaining in his path, whereas Stubbs first observed the Appellant's vehicle when it was already in the roadway. He further submits that these inconsistencies were material to reaction time, the necessity for evasive action, and causation. The Court finds, that a witnesses observing a rapidly unfolding road incident from different positions, are not necessarily expected to reproduce an identical account of every movement.

[26].The question is whether the inconsistencies undermined the central evidential proposition upon which the Magistrate acted. In my judgment, they did not.

[27].Both witnesses materially supported the proposition that the Appellant's vehicle emerged from the parking area and entered the roadway at a time when Brown's vehicle was approaching, requiring Brown to react. The fact that one witness first noticed the Appellant at a different stage of that movement did not destroy the common evidential foundation of their accounts.

[28].The Magistrate expressly considered the inconsistencies. This is not a case in which a material contradiction went unnoticed. He evaluated the evidence of Brown and Stubbs and accepted them on the material issue before him.

[29].I see no proper basis upon which to conclude that the Magistrate's factual conclusion was unavailable for his consideration based on the evidence before him.

The absence of a collision

[30].Considerable emphasis was placed upon the fact that there was no physical collision between the Appellant's vehicle and Brown's vehicle.

[31].That circumstance is not determinative. Section 46 does not require the prosecution to establish an impact between vehicles. The prohibited conduct is driving without due care and attention or without reasonable consideration for other road users. A driver may create a road hazard requiring another motorist to brake, swerve, or take other evasive action without the vehicles coming into physical contact with each other.

[32].Accordingly, the Magistrate committed no error of law merely because he found the offence proved in circumstances where Brown's vehicle did not strike the Appellant's vehicle.

[33].The Appellant further argues that the Magistrate failed to properly consider whether Brown's own driving, his decision not to brake, his speed, or the mechanical condition of his brakes caused the incident.

[34].Those matters were relevant to the overall assessment of whether the Prosecution had proved the charge beyond reasonable doubt. They did not, however, require the Prosecution to disprove every speculative alternative explanation unsupported by evidence.

[35].The proposition that Brown's vehicle had defective or ineffective brakes was put to Brown. He did not accept it. The Appellant did not produce evidence establishing a mechanical defect in Brown's braking system and did not profess personal knowledge of the condition of those brakes.

[36].The Court finds, that there was no evidential basis before the Magistrate, which required him to find that defective brakes caused the incident. By the same token, the question remains whether the Appellant's manner of entering and crossing the road amounted to driving without due care and attention. On the evidence the Magistrate accepted that it did.

The investigating officer

[37].The Appellant criticises the Magistrate's treatment of Woman Sergeant Turner-Rolle's evidence and argues that she did not witness the occurrence and therefore could not determine how it happened.

[38].I accept the limited proposition that the opinion of an investigating officer who did not witness the incident cannot, without more, substitute for proof of the elements of the offence.

[39].That, however, is not what sustained the conviction. The Magistrate had direct testimony from Brown and Stubbs as to the occurrence. Moreover, the Appellant himself gave evidence concerning the manner in which he checked the roadway before proceeding. The officer's evidence principally concerned her investigation, observations at the scene, the parties with whom she spoke, the sketch and photographs.

[40].Even if the Magistrate's observations concerning the thoroughness of the Police investigation went further than was necessary, the conviction did not depend upon the officer's charging recommendation as proof of guilt.

The evidence of Ms. Cedell Hunter

[41].The Appellant also relied upon the evidence of Ms. Cedell Hunter, who was recorded as saying that ***'Mitchell was cross the road long time'***. He complains particularly about the Magistrate's reference to Hunter's evidence that Brown had

said that Mitchell had '*run him off the road*', contending that the statement was hearsay if used as proof of the truth of its contents.

[42].It is unnecessary for the determination of this appeal to decide whether that statement was admissible for every purpose for which the Magistrate may arguably have considered it.

[43].Even leaving that statement entirely out of account as proof of causation, there remained the direct testimony of Brown, the evidence of Stubbs, and the Appellant's own evidence as to the sequence in which he looked before entering the roadway.

[44].The finding of guilt was therefore not dependent upon Hunter repeating Brown's post-incident statement. Any error in attaching significance to that particular statement would not, in my judgment, displace the independent evidential basis identified in the Magistrate's reasons.

The locus in quo

[45].The Appellant complains that his request for the Court to visit the location of the incident was refused and contends that this caused procedural unfairness, particularly because the sketch plan was not to scale.

[46].A site visit is an evidential aid. It is not an entitlement in every road traffic proceeding. The Magistrate had before him oral descriptions of the area, the evidence of the persons present, a sketch plan and photographs of the scene. Moreover, the Magistrate also recorded that he was familiar with the area.

[47].The Appellant has not demonstrated what specific material fact could only have been fairly determined by conducting a view, nor has he established that refusal of the request deprived him of the ability to cross-examine the Prosecution witnesses or have a clear understanding of what was before the Court.

[48].I am therefore not satisfied that the refusal to visit the locus rendered the proceedings unfair or occasioned a miscarriage of justice.

[49]. I now move onto the Appellants contention concerning an incomplete Appellate record. This is the most substantial issue raised by the supplemental submissions and requires separate treatment.

[50]. **Section 242 of the Criminal Procedure Code** gives an Appellant on an appeal by motion, after service of notice on the Magistrate's Court, an entitlement to receive with all convenient speed a copy of the evidence taken by the Court together with the conviction, order or judgment.

[51]. The Appellant states that although a bundle of documents was eventually made available, the original notes of the Magistrate were not produced. The material said to have been provided included the conviction certificate, charge sheet, sketch plan, four photographs and the Magistrate's written decision. The supplemental submissions contend that the missing notes prevent meaningful Appellate scrutiny.

[52]. I do not consider that the absence of a complete record, without more, necessarily renders the appellate process ineffective or compromises the proper determination of the appeal. The Court is mindful of the circumstances surrounding the availability of the Magistrate's notes, particularly, that the proceedings were conducted while the Magistrate was on circuit duty in Cat Island and that the notes were subsequently transported to New Providence. The completeness of the record must therefore be considered in its proper context, with particular regard to whether any omission materially impairs the Court's ability to undertake a fair and meaningful appellate review.

[53]. The question for the Court is one of consequence and remedy. Does the absence of the original notes in this particular case necessarily require that the conviction be quashed?

[54]. The Appellant relies upon *R v Parker* (1966) 9 JLR 498; (1966) 10 WIR 85, *Police Commissioner v Springer* (1962) 4 WIR 286, and *Evon Jack v R* [2021] JMCA Crim 31, among other authorities. The Jamaican Court of Appeal decision in *Evon Jack* is particularly useful because it reviews the earlier authorities and demonstrates that the consequence of a missing transcript depends upon the circumstances of the particular case.

[55]. In *R v Parker*, portions of the notes of the evidence and summing-up were unavailable. The Court of Appeal, following *Police Commissioner v Springer*, concluded that it could not properly consider the appeal on the material available and quashed the conviction.

[56]. However, in *Evon Jack v R* [2021] JMCA Crim 31, *Brooks P*, having reviewed the authorities concerning incomplete records, stated at paragraph 31 and 34 that:

The absence of a portion of the transcript will not invariably result in the conviction being overturned.

[57]. The Court referred to *R v Cecil Stewart* (1967) 10 JLR 222, in which the trial judge's report and notes supplied sufficient information to permit the appeal to be heard and the conviction affirmed. It also referred to *Delevan Smith and others v R* [2018] JMCA Crim 3, where the Court was able, despite missing portions of the evidence and unavailable trial notes, to determine the appeal from the remaining transcript and the judge's summation.

[58]. The Court in *Evon Jack* stated that “each case is to be decided on its own facts.” The proper enquiry is therefore not simply whether some part of the record is missing, but whether what remains permits a fair and effective review of the grounds actually advanced.

Application to the present appeal

[59]. The present case is materially different from a case in which the substance of the evidence is unavailable and an appellate court is consequently unable to test the grounds of appeal.

[60]. In the instant matter, there is a contemporaneous written decision in which the Magistrate recorded at substantial length the evidence-in-chief, and cross-examination of the material witnesses, the evidence of the Appellant, and his witness, the questions posed by the Court, the issues for determination, the law applied, his treatment of the asserted inconsistencies, and his reasons for accepting or rejecting the competing accounts.

[61]. The material preserved in the Magistrate's written decision enables this Court to identify the relevant disputes and assess whether the reasons given were legally and evidentially sustainable. In the circumstances of this appeal, I am not satisfied that the absence of the original notes deprived the Appellant of a meaningful appeal or resulted in a miscarriage of justice. The available record is sufficient to permit the appeal to be resolved on its merits.

[62].The Court finds that the Magistrate was entitled to find that the Appellant failed to exercise due care and attention. The inconsistencies complained of did not eliminate that evidence, nor did the absence of physical contact of the vehicles. The Court further finds that it was not necessary for expert testimony to be given as to the precise speed, stopping distance or mechanical condition of Brown's vehicle as necessary to establish the Appellant's manner of driving.

Conclusion

[63].I have considered the grounds individually and cumulatively. The Appellant has not demonstrated that the Magistrate applied the wrong legal test under **section 46** of the **Road Traffic Act**. Furthermore, he has not demonstrated that the Magistrate disregarded material inconsistencies in the evidence or reached findings which were unsupported by the evidence.

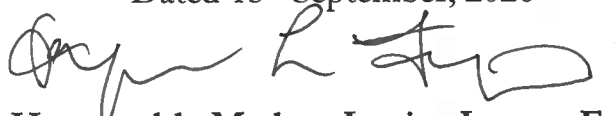
[64].I am satisfied that the Magistrate recognised that the burden remained throughout the trial upon the Prosecution, and that the offence was required to be proved beyond reasonable doubt. I am equally satisfied that the conclusion reached was supported by evidence which the Magistrate was entitled to accept.

[65].Having regard particularly to the detailed reasoned decision of the Magistrate and the nature of the grounds advanced, I am satisfied that a fair and effective appellate review is possible and that the Appellant has not established any basis upon which this Court should exercise its powers and disturb the Magistrates decision.

It is hereby ordered that:

- i. The appeal is dismissed.
- ii. The conviction of **COP v Mitchell Poitier** dated 8 October 2025 for Driving without Due Care and Attention contrary to section 46 of the Road Traffic Act, Chapter 220, is affirmed.
- iii. The sentence imposed by the Magistrate's Court is affirmed.

Dated 15th September, 2026



The Honourable Madam Justice Joyann Ferguson
Supreme Court