IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.477/84

BETWEEN DAVID VICTOR McBRIDE

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Hearing: 16 November 1984

Counsel: G.E. Langham for Appellant
G.K. Panckhurst for Respondent

Judgment: 12 DEC 1984

JUDGMENT OF HARDIE BOYS J

This appeal is against conviction on a charge of careless use of a motor vehicle causing injury to the passenger. It is a matter of concern that it relates to the events of a year ago. It arises from an accident on 27 November 1983. The information was sworn on 31 January 1984, but the case was not heard in the District Court until 13 August 1984. That is far too long a delay.

The appellant was driving east along Moorhouse Avenue, and then down Waltham Road. Not far past the corner of Austin Street, where Waltham Road itself curves to the left, the car went out of control, spun around and skidded some distance backwards, colliding with a lamppost. Both the driver and the passenger were injured and taken to hospital. The

prosecution case was that the car was being driven too fast and so failed to negotiate the bend safely.

The passenger's evidence was that in Moorhouse Avenue the car she was in was passed by another driven by a friend of the appellant, and that the appellant set out to catch him up. Although as they approached the Waltham Road overbridge they were "going pretty fast", the friend's car was still gaining on them. As they came to the bend near Austin Street, they were "going at such a speed I knew we could not make it round the corner". She had no idea of the actual speed, "but I know it was pretty fast". The car began to spin when they were half way round the bend. The other prosecution witness, a traffic officer, said that the skid marks began past the bend, and that the car was damaged on its left side, where its wheels had dragged along the kerb and where it hit the power pole. The officer spoke to the appellant at the scene. He said that he had been "going a wee bit fast trying to catch a friend", and that as he went into the bend" the front of the car dipped and went out of control". His speed was approximately 80-90 kph - this was all a 50 kph area. Two weeks later, the officer spoke to the appellant again, and this time the appellant said that his speed was approximately 50 kph.

The defence, however, was directed not to speed but to the tyres. The passenger said that when they set off, they both noticed that the front left tyre was soft. Yet nothing was done about it. And when the appellant spoke to the traffic officer at the scene, his immediate reaction the traffic officer said was to blame this tyre. In fact, that tyre, despite its skid along the kerb, was still inflated.

But the front right tyre, which had not sustained any impact, was not. The rim was undamaged, but the tyre, though still centred on the rim, was according to the traffic officer, completely deflated.

The appellant gave evidence. He denied knowing that the left front tyre was under-pressure. He said that as he approached the curve he was "doing over 30 mph, definitely under 50 mph", that he knew the road well, and that as he was coming out of the corner, if not actually out of it "I seemed to get a pull or something, the front of the bonnet seemed to go down a little bit, next thing we went right round and were going backwards. The pull on the bonnet was on the right hand side". He denied trying to catch up with his friend and denied having told the officer he had been travelling at between 70 and 80 kph. He blamed the accident on "a sudden pressure loss in my right front tyre". The tyres, he said, were only about a month old. He made the point that he was unable to have the tyre checked after the accident, because he did not know he was to be prosecuted until mid-January and by then the tyre had gone.

The appellant's friend also also gave evidence and said that as he passed the appellant he himself was travelling at 40 mph, that as he travelled down Waltham Road his speed was between 40 and 50 mph and that the two cars were maintaining the same distance between them. This witness also saw the right front tyre, immediately after the accident, when he said it was half flat, with sufficient air to drive on, although it would have been dangerous to do so.

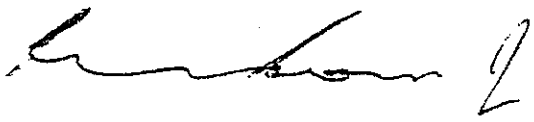
The Judge accepted the traffic officer's evidence of what the appellant told him at the scene, and on that basis held that the car's speed was between 80 and 90 kph. I must accept that finding. He rejected the explanation of loss of pressure in the right front tyre as a reasonably possible cause of the accident. That explanation he thought was speculative, because of the age of the tyre, the defence witness's evidence that it was only half flat after the accident, because there had been no mention of the "pull down" of the bonnet to the traffic officer, and because "as a matter of common sense, a flat or partially flat tyre may well have resulted from violent manoeuvring such as this vehicle obviously underwent".

Had it indeed been the case that the "pull down" had not been mentioned at the time of the accident, there would have been considerable justification for regarding it as an afterthought, prompted by the state of the right front tyre after the accident, and for treating the accident as attributable to the speed at which the vehicle was being driven. But the Judge overlooked that the same explanation, although in slightly different words, and apparently directed towards the left tyre, which it must be taken he did know about, had indeed been given to the traffic officer at the time. In the light of that, it was I think wrong to dismiss the condition of the right tyre as possibly pointing to the cause of the accident. There was no evidence about that tyre other than the passing observation of the two witnesses, although the Ministry obtained an automotive surveyor's report on it. Therefore the Judge's comment on the reason for the deflation was based on no more than his own opinion. It is

not a proposition upon which I would myself venture an opinion, and the topic is well outside the proper area for judicial notice.

The appellant was certainly speeding, and he was untruthful to the traffic officer about his speed. But the charge was that he was careless, and its proof depended on whether or not loss of control due to tyre failure was a reasonably possible alternative explanation. The case is marginal, but in the end I am satisfied that the possibility cannot be rejected. The Judge may well have thought the same had he noted that it was not a mere afterthought.

In these circumstances the appeal is allowed and the conviction is set aside.



Solicitors:

Spiller, Rutledge & Langham, CHRISTCHURCH, for Appellant
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