

IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

M.67/83

BETWEEN

BRUCE PETER WARD

Appellant

AND

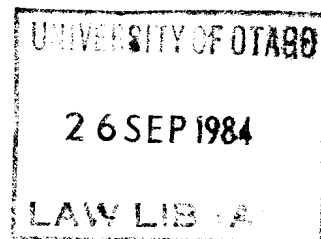
MINISTRY OF TRANSPORT

Respondent

Hearing 22 March 1984

Counsel F. S. Steedman for the Appellant
D. C. McKegg for the Respondent

Judgment 26 March 1984



JUDGMENT OF ONGLEY J

Bruce Peter Ward was convicted in the District Court at Palmerston North on 8 September 1982 on charges under Section 65(1) of the Transport Act 1962 of failing to stop after an accident and of failing to ascertain whether any person was injured. He has appealed against the decision of the District Court Judge.

The evidence showed that at about 11.40 p.m. on 8 May 1982 the appellant drove his motor car up Pitt Street to the intersection of Pitt and Cuba Streets where he turned to his right into Cuba Street. His car slid on the road surface in the course of the turn and struck a car parked nose in to the curb on his left hand side of Cuba Street. There is a conflict in the evidence as to what then happened. A Mr Wood who was on foot in Cuba Street at the

time of the impact saw the collision from about 75 to 100 yards away and ran towards the two cars. He said that after the appellant's car hit the parked car "it stayed there for a few seconds and then backed up and pulled over". It is not clear from the notes what the witness meant by the expression "pulled over" but I am satisfied upon re-reading the transcript that Mr Wood observed only one movement made by the appellant's car between the time of the impact and the time when it was driven away from the scene. He said, and repeated on two occasions, that the car remained in the position into which it was moved after the impact for "8 seconds or so". Under cross-examination he said that he did not know how much time went by between the time when the impact took place and the time when the appellant's car backed away from the other car. When asked whether a minute of time may have gone by between the initial impact and the time when the appellant's car left the scene he said:

"Not a minute. I probably walked the length of this room (the courtroom) and was a little way from the car. Yes it could have been a minute."

If, as that answer indicates, he was equating the time from impact to departure with the time it would take to walk the length of the courtroom, then his estimate of a minute was clearly inaccurate. It would take only a few seconds to walk the length of the courtroom. However

that may be, any extended time would relate to the period between impact and backing away because the witness appeared to adhere to his estimate that the appellant's car remained at the scene in the position to which it was moved for only eight seconds or so, subject to a concession in cross-examination that it was only an estimate and that the time could have been longer. It is reasonably clear that he did not mean to say that it could have been very much longer than 8 seconds. While the appellant's car was stationary at the point of impact Mr Wood had it under observation until it backed off, during which time he did not see any person get out of it. He conceded that the driver could have got out of it after it was backed away and got back into it again unobserved by him but said that if that happened "it must have been very quick". In re-examination he said that a person would not have had enough time to get out of the appellant's car and go and look inside the other car during the time when it was first stationary, that is, before it was backed away from the parked car.

The District Court Judge placed some reliance upon the supposed admission made to the traffic officer. I have to say that I take a different view of that evidence. When he interviewed the appellant the traffic officer was under the impression that the offending vehicle had hit the parked car and kept going. He said that that was what Mr Wood told

him had happened. Clearly it was not so. When faced with an enquiry as to why he had not stopped the appellant said he did not think it was a good idea at the time. He explained his answer in evidence by saying that he thought the officer was enquiring why he did not stop and remain stopped until a patrol car came. On the prosecution version of the facts he had stopped, however briefly. Had the traffic officer appreciated that fact his enquiries would no doubt have been more specific as to the movements of the appellant's car. As it is, I think the interview was conducted upon a misapprehension as to the alleged facts and is of no assistance in determining where the truth lies.

The appellant in evidence said that he did not reverse away from the other car after impact to another stationary position as described by Mr Wood. He said he sat dazed in the impact position then got out and went to see the extent of the damage to his car, looked quickly at the other car, jumped back in his own car and "took off". With regard to the presence of any person in the car he said he "just kind of looked through the windows", specifically the back right-hand side window, and did not see anyone. His passenger disagreed with this version of events. He said the appellant reversed back before he got out of the car; then he looked at the damage and had a quick look in the back of the other car through the back passenger side door before driving off.

On the preponderance of evidence, apart altogether from the question of credibility, it appears that there was a backing movement after impact and that no one got out of the car before that took place. The time available to the appellant after that to get out of his car and ascertain whether there was any person in the other car who may have been injured in the accident was approximately eight seconds. In that time, even on his own version of the facts, the appellant was engaged in looking at the damage to his own vehicle, and taking a quick look at the other car, as well as looking in the rear window. It is reasonable to infer that very few seconds were occupied by the last mentioned activity.

In Houten v Police 1971 NZLR 905 Mr Justice Richmond was not satisfied that a period of 15 seconds was insufficient to do what needed to be done in the circumstances of that case to ascertain whether any person had been injured in the accident. There can be no fixed period which is applicable to every case. The manner in which the duty to stop is to be fulfilled in relation to the passage of time was described by Mr Justice Richmond in Houten's case at p.906 as follows:

"If the duty to stop is so interpreted as to enable a driver to leave the scene of an accident as soon as his wheels have stopped turning then it is a duty which appears to me to serve no sensible purpose whatever. This consideration alone is sufficient to convince me that the word "stop" should be given the second of the two meanings to which I have earlier referred. Going a stage further, I think that the actual purpose of subs (1) is to ensure that a driver must

ascertain whether anyone is injured at a time when his own vehicle is stopped and not merely by observation from a moving vehicle. It follows that the duration of the stop which is required by the Act must be measured at least by the time reasonably necessary in all the prevailing circumstances to enable proper enquiry to be made. Possibly it may also have to be measured by reference to the duty to render assistance, but that question does not arise in the present case as nobody was in fact injured."

What is an adequate period for a driver to remain stopped is a question of fact to be decided in the circumstances of each case. Whether one accepts that the appellant in this case got out of his car when it was stopped or not the time at his disposal was very short indeed. I do not think it was sufficiently long to permit him conscientiously to carry out a proper enquiry as to whether there was any person in the parked car and if so what that person's physical condition may have been. As it happened there was no one in the parked car or in the close vicinity of it but that was no more than a chance circumstance. In reaching the conclusion that no proper enquiry was in fact made I am as much influenced by the appellant's own description of his actions as by the shortness of the time available to him.

I agree with the District Court Judge that breaches of Section 65(1) of the Transport Act 1962 were proved

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against the appellant and the appeal will accordingly be dismissed.

John A. T.

Solicitors:

Crown Solicitor, Palmerston North, for the Respondent
Petersen Sivyer & Co., Palmerston North, for the Appellant