

1219

BETWEEN

BANTON of
Auckland, Auto-Wrecker

Appellant

AND

MINISTRY OF TRANSPORT

Respondent

Offence: Driving with excess blood-alcohol
Excess Speed
Failing to accompany a traffic officer

Dealt With: 3 May 1984 At: Auckland By: Wallace DCJ
Sentence: Periodic Detention 3 months
Disqualification 6 months

Appeal Hearing: 17 September 1984

Oral Judgment: 17 September 1984

Counsel: M G Ring for appellant
D B H Jones for respondent

Decision: APPEAL DISMISSED

(ORAL) JUDGMENT OF HENRY J.

This is an appeal against conviction on three driving charges. The only issue raised in this Court as well as in the Court below is whether the identity of the appellant as the driver of a vehicle involved in a series of incidents was properly proved. The incidents took place shortly after midnight in the early hours of 18 September 1983 in Pakuranga.

The only evidence given at the hearing was by a traffic officer employed by the Ministry of Transport, who gave evidence to the effect that he had followed a car for some 500 odd metres, that it had then stopped at a set of traffic lights, and at that point of time he had an opportunity to and did observe the driver of the vehicle, primarily through the driver's own rear vision mirror. When the lights changed that car moved through, turned into another road where it stopped, and the traffic officer pulled up immediately behind it. At that stage it appears that the driver of the car alighted and made off. Shortly afterwards, the appellant was seen and spoken to at a phone box nearby, and then again later at the Pakuranga Town Centre. On both occasions he denied having been involved in any way in what I have just referred to. The traffic officer gave positive evidence of having identified the appellant as the driver on both occasions, both at the phone box and at the Town Centre.

For the appellant, it is conceded that the learned District Court Judge properly directed herself as to all relevant legal principles, including the need for caution on a question of identification such as was in issue here, and accordingly the sole question before this Court is whether the evidence given and the findings made on that evidence can support proof of identity of the appellant as the driver in question. I note first that

there was, as I have already said, positive evidence of identification, and in the course of that the traffic officer referred to his having been certain in that identification. Second, there was evidence given by him detailing the opportunity or opportunities he had to observe to enable him to make those identifications. There were two occasions involved, the first being when the vehicles were stopped at the traffic lights, and the second being when the leading vehicle finally stopped and the driver got out and ran away. The traffic officer, during the course of his evidence, gave a description of the driver as he observed him at the time, and also gave details of the basis of his identification. This included a description of the length and colour of the hair of the driver, that he was wearing a beard at the time, and he also referred in some detail to clothing and footwear being worn. On the face of it, there being no challenge to the factual correctness of that evidence, there was it would appear ample evidence to enable the Court below to accept and act upon it if it thought fit.

The real substance of the appeal, as I see it, relates to the occasion of the first identification at the telephone box. In that regard, Mr Ring made two main points, the first being the failure by the traffic officer to refer to it at all in his evidence-in-chief. In explanation for that, it was stated that it was some 6

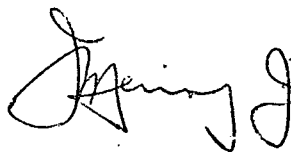
months after the event and that the traffic officer had forgotten to detail it when giving his evidence. The second main factor was that the conduct of the traffic officer immediately following the brief discussion and confrontation in the phone box was inconsistent with a firm identification by him at that point of time. The evidence shows that following that brief discussion the traffic officer returned to his own patrol car, which was out of sight of the telephone box, and that therefore he did not apparently do any monitoring of the appellant's movements. He next saw the appellant at the Pakuranga Town Centre, having apparently by that time received advice from some other person there that there was someone answering the description of the driver of the car which he had apparently conveyed to other Transport Department personnel. His explanation at the hearing for the failure to do anything in the intervening time by way of monitoring was a fear for his own safety, caused by the reaction which the appellant had made towards him when he had made the approach to him at the phone box and he denied, in reply to a specific question, that this was in any way due to an uncertainty in his mind as to the correctness of his identification.

The learned District Court Judge expressly accepted that explanation and, inherent in that finding, must be a finding that the traffic officer was then certain of his identification. So to succeed on this appeal in

the light of the acceptance of that evidence, the appellant really has to show that the only inference to be drawn from the traffic officer's conduct was one of uncertainty as to identity. Undoubtedly criticisms can be made, and indeed were made in some detail in the Court below, but they are really all matters for consideration and weighing up by that Court, charged as it was with the duty of hearing and deciding the information. I do not think that it can be said that the only inference open to the Court hearing that evidence was that the traffic officer was uncertain as to identity. In my view, the learned District Court Judge was entitled, as she did, to accept his sworn testimony as to what happened and the reasons for it.

I have also given consideration to the totality of the evidence and looked at that in conjunction with the matters to which I have just referred. In my view, looking at all those matters objectively as an appellate Court, I do not think it can be said that it has been demonstrated that the identification as a whole was unsatisfactory. It was in my view open to the Court below, on the totality of that evidence, to convict and there was as I see it no misdirection by the learned District Court Judge, either as to law or as to any matter of fact. Accordingly the appeal will be dismissed.

It is necessary to fix a fresh date for reporting to the Periodic Detention Centre. The appellant will first report on Friday next, 21 September 1984.



Solicitors:

Milne Meek & Partners, Auckland, for appellant
Crown Solicitor, Auckland, for respondent