

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

AP 284/94

BETWEEN

EDWARDS

Appellant

A N D      POLICE

Respondent

Hearing: 23 November 1994

Counsel: S.J. Gill for appellant  
Mrs B.M. Mackintosh for respondent

Judgment: 23 November 1994

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JUDGMENT OF DOOGUE J

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This is an appeal against conviction and sentence. The appellant was found guilty by Justices of failing to keep as far as practicable to the left side of a roadway in Petone and fined \$40 and ordered to pay court costs of \$95 and witnesses' expenses of \$300.

The onus is on the appellant to satisfy the Court that in all the circumstances the Justices of the peace were not warranted in entering a conviction or at least that their minds should have been left in a state of reasonable doubt. Thus effectively the onus is upon the appellant to show the decision was wrong. Any advantages the Justices may have had in seeing and hearing the witnesses have to be borne in mind in this Court.

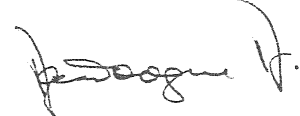
Put simply, the evidence before the Justices was that the appellant was driving along Nevis Street,

Petone. A car turned left from Locky Street into Nevis Street. The driver of the vehicle turning left, according to the appellant, actually stopped after entering the intersection before moving on. The appellant accepts that his vehicle was 0.8 of a metre over the centre of the roadway. The appellant accepts that he could have been further to the left but that he did not move further the left because of his fear that children or other persons might step out on to the road and because of his understanding that the other vehicle would stop where it was.

The Justices, with all justification, refused to accept the explanations of the appellant and accepted in the circumstances of the case, when there was ample room for the appellant to move further to the left, that the appellant had not driven as close as was practicable in the circumstances of the case to the left side of the roadway. There is no substance therefore in the appeal against conviction, and it will be dismissed.

So far as the appeal against sentence is concerned, it understandably focuses solely on the order that the appellant pay \$300 towards the witnesses' expenses incurred as a result of the air fare of bringing a witness to the court. However, the maximum fine for the particular offence is \$500, and it is apparent that the penalty imposed by the Justices of a \$40 fine adequately recognises that the payment of the witnesses' expenses of \$300 was in itself to a considerable extent a penalty upon the appellant.

Looked at in the round, it cannot be said that the fine combined with the costs and witnesses' expenses is manifestly excessive in the circumstances of the case or wrong in principle or that there are exceptional circumstances calling for it to be reviewed. The appeal against sentence is also dismissed.

A handwritten signature in dark ink, appearing to read "F. J. ...". The signature is written in a cursive style with a large initial letter.