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LOW PRIORITY

IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

AP 4/97

BETWEEN **SULLIVAN**

Appellant

AND **POLICE**

Respondent

Hearing: 30 May 1997

Counsel: J W True for Appellant
M Downs for Respondent

Decision: 30 May 1997

ORAL DECISION OF GENDALL J

Solicitors:

Bryson Burnett & Co, Raumati Beach for Appellant
Crown Solicitor's Office, Palmerston North for Respondent

This is an appeal against a conviction for dangerous driving in breach of s57(C) Transport Act 1962 entered against the appellant after a defended hearing in the District Court at Levin on 1 May 1996. The notice of appeal was not filed until 5 June 1996 therefore being out of time as an appeal must be filed within 28 days of the date of sentence. The appellant sought leave to file this appeal out of time and there has been no opposition by the Crown. Accordingly leave is granted pursuant to s123 Summary Proceedings Act.

To support the appeal the appellant has filed two affidavits made by herself and two affidavits made by Rachel Mary Byrne but before the Court admits such evidence leave must be sought and granted. Both the appellant and Miss Byrne gave evidence in the District Court. The High Court may hear new evidence only if such evidence could not in the circumstances have been reasonably adduced at the original hearing (see s119(3) Summary Proceedings Act). I am not satisfied that this evidence is new and indeed it is simply evidence expanding upon that what the appellant and the witness gave in the District Court. It does not fall into the category of fresh evidence which is of sufficient credibility or probative weight as to require it to be admitted for the purpose of determination of this appeal and such evidence is not admitted.

I turn now to the appeal.

The evidence before the learned District Court Judge was that prior to entering Cambridge Street, Levin, the location in respect of which the charge is concerned, a member of the public driving on Main Road in Levin observed a white motor vehicle being driven in an erratic manner so as to veer unexpectedly across the lane of ongoing traffic and onto an embankment beside the railway line. That member of the public was not able to identify the driver of that white vehicle but was sufficiently concerned to stop his car and telephone the Police to lay a complaint because of concern for public safety. Upon receipt of that complaint Police Constable Blyth gave evidence that he received radio advice that a white Nissan vehicle had been driving erratically on Main Road south, Levin. I add that of

course that evidence is hearsay but it is evidence which prompted Constable Blyth to proceed in that direction in an endeavour to locate a white vehicle. In the meantime a white vehicle was observed by another member of the public, Mr Carroll, within a few minutes of the first complaint being made by the Police, he saw the vehicle travelling north on Cambridge Street in Levin where it appeared to negotiate a roundabout at excessive speed as to mount the traffic island. That witness was himself also sufficiently concerned about the manner in which this vehicle was driven that he likewise telephoned the Levin Police. He said in evidence "there appeared to be something wrong with the driver". He was not able to identify in evidence the make of the vehicle, or the driver. His complaint was conveyed by radio to Constable Blyth, within three to four minutes of the constable receiving the first message. Because of the allegation of the incident in Cambridge Street the constable proceeded to Cambridge Street where he observed a white vehicle, a Nissan registration number EX2846, travelling north on that street. That was the direction that Mr Carroll said that the vehicle he observed was travelling. The Police constable stopped the vehicle which for some reason reversed, or rolled back into the patrol car, and a collision occurred. The Police constable's evidence was the driver of the vehicle fell out of the driver's door falling onto the road so that he thought that she may have been under the influence of some intoxicating drug. He identified that driver as the appellant. He administered an evidential breath screening test which was negative. In evidence before the District Court Judge the appellant, who represented herself, admitted driving a Nissan white motor vehicle but denied the events as described by both civilian witnesses. Of course the appellant was not charged with dangerous driving on Main Road, Levin and the purpose of evidence from the member of the public in respect of events on Main Road was simply to complete the narrative as to what the prosecution alleged was a continuous piece of erratic and dangerous driving. The learned District Court Judge convicted the appellant on the basis that he was satisfied beyond reasonable doubt that at all times the appellant was the driver of the white Nissan car and that her manner of driving in Cambridge Street was clearly dangerous.

The issue in dispute was that of identity. Proof of identity can occur in a number of ways. Naturally, a fact finding tribunal must exercise care and caution in determining questions of identity because honest witnesses can be mistaken and matters of identity depend on all the circumstances which include the length of time a person or object is under observation and so forth. The evidence before the learned District Court Judge was both direct and circumstantial. It was direct as to the manner in which a particular car was being erratically driven on two separation roads within a very short period of time. It was direct as to the manner in which the car was driven, and behaviour of the appellant, the driver of a white motor vehicle was stopped on the very street in which Mr Carroll had observed a vehicle behaving erratically. That behaviour was such as to corroborate the view Mr Carroll formed that there appeared to be something wrong with the driver. A combination of circumstantial and direct evidence was such that on the question of fact I am satisfied that the learned District Court Judge was fully entitled to come to the conclusion that the prosecution had proved its case beyond reasonable doubt. It was a question of fact, not law, and a question of his assessment of the witnesses, their credibility and their reliability. It was further a question of the learned District Court Judge drawing reasonable inferences from proven facts and the totality of the evidence was such that he was entitled to reach the conclusions he did. Proof in criminal cases is not necessarily a matter of mathematical exercise or mechanical precision. It is a question of the fact finding tribunal assessing the credibility of witnesses in weighing up all the factual circumstances so as to come to a view, or not as the case may be, whether he is satisfied beyond reasonable doubt.

I have no doubt that the learned District Court Judge adopted a proper reasoning process as is apparent from his judgment and the evidence was more than sufficient to warrant conviction. The appeal is without merit and is dismissed.

.....J.

J W Gendall J