Supreme Court of the Falkland Islands
Review Case No. 1 of 1994

R. v ALFONZO HOBMAN MC/CRIM/8/94
(Stanley Magistrates Court ~~Criminal~~ Case No ~~CR/225/93~~)

JUDGEMENT ON REVIEW

On the 23rd February 1994 the defendant, Alfonzo Hobman, appeared before the then Senior Magistrate, Mr James Wood, charged in three counts with driving a Landrover number F109B in Brandon Road, Stanley, on the 3rd December 1993 -

(1) recklessly, contract to section 9A(3) of the Road Traffic Ordinance 1948;

(2) when the vehicle was not fitted with adequate brakes as prescribed by section 15 of the Road Traffic (Provisional) Regulations Order 1986, contrary to section 7(3) of the Road Traffic Ordinance 1948; and

(3) there not being in force in relation to the use of the vehicle a valid policy of insurance, contrary to section 6 (1) of the Road Traffic Ordinance 1948.

The defendant pleaded guilty to each of these offences.

A summary of the facts of the case was read to the court by the prosecutor who submitted two claims for compensation amounting to £593.29 for estimated damage to a Landrover no F140 belonging to a Mr Butler and £169 for damage to an electric power transformer. The learned Senior Magistrate then adjourned the case to the 9th March 1994 for sentence and in order that the defendant might seek legal advice.

On the 9th March Mr Kilmartin appeared for the defendant at the resumed proceedings before the present Senior Magistrate, Mr Andrew Jones.

An invoice in respect of repairs to Landrover No F140 for £492 from C.M. & F.F. Ford Garage Works was handed in to the court as was a Power and Electrical Department invoice for £169, being the estimated cost of repair for damage to the power transformer.

After hearing Mr Kilmartin in mitigation on behalf of the defendant and after inquiring into the defendant's means, the learned Senior Magristrate sentenced the defendant as follows:-

On Count 1 — to a fine of £400 and disqualified the defendant from obtaining or holding a driving licence for 12 months;

On Count 2 — to a fine of £100;

On Count 3 — to a fine of £300 and to 12 months' disqualification concurrent with the disqualification ordered in respect of Count 1.

The defendant's driving licence was endorsed in respect of all three offences, and he was ordered to pay compensation for damage to the transformer in the sum of £169 and for damage to Landrover F140 in the sum of £492. The defendant has paid the fines and compensation totalling £1,461.

The record of the proceedings together with comments of the Attorney General and comments and submissions by Mr Barker for the defendant on the sentence imposed by the learned Senior Magistrate have been forwarded to me by the Senior Magistrate with the consent of the parties in order that I may review the sentences in exercise of the powers conferred by section 53A of the Administration of Justice Ordinance.

The facts of the case, which are not disputed, are as follows.

On the 3rd December 1993 Mr Hobman was 18½ years old. He was employed as an apprentice gardener at Government House earning

£130 net a week, out of which he paid £40 a week to his mother with whom he lived. He had a savings account for the purpose of buying a house. He had no previous convictions. He had passed his driving test in June 1993. Sometime prior to this, he had purchased Landrover F109B for £550 in a bad state of repair and had arranged for it to be repaired. On Friday 3rd December he was told that the Landrover had been repaired. Accordingly he paid road tax on the car and made to take our third party insurance in respect of the use of the car but failed to do so because he found that the insurance company office was closed. Mr Hobman told the police later that he had intended to insure the vehicle on the following Monday when the office reopened.

In spite of not having any insurance covering use of his Landrover, and in spite apparently of not having had any driving experience since taking his test in June, Mr Hobman decided to collect his car from the repairer in Eliza Cove Road and to try it out.

At about 1650 hours Mr Hobman was seen in his Landrover shooting out from Eliza Cove Road, turning erratically into the Bypass road and in a series of jerky movements driving into a ditch beside the road on his left. He was next seen shooting forward across the Bypass, across the ditch on the right of the road and onto waste ground near the ARC building. There in a series of forward and back movements the Landrover was seen to reverse into a power transformer. It then drove off in the direction of the town centre.

At 1700 hours as Mrs Clarke was driving along Brandon Road approaching the junction of Reservoir Road and a Landrover No F140 parked on the grass verge on her left, Mr Hobman emerged from Reservoir Road immediately ahead of Mrs Clarke and came straight for her. He then swerved to his right colliding with the parked Landrover no F140. It appears that Mr Hobman did not look to see if anything was approaching as he emerged from Reservoir Road and then when he saw Mrs Clarke's vehicle he applied his brakes and,

on finding that they had no effect, swerved into the parked Landrover to avoid Mrs Clarke's vehicle.

On subsequent examination of the defendant's Landrover by the Police, it was found to be in a dangerous condition for use on a road; the brakes and a number of other parts were found to be defective and it was found to fail in all but two respects the prescribed test for roadworthiness.

It is not contended in the helpful observations and submissions made by the Attorney General and by Mr Barker that the sentences imposed by the learned Senior Magistrate were not within the court's jurisdiction, or that they were made on a wrong interpretation of the facts, or that in arriving at the sentences the learned Magistrate wrongly took into account matters which he should not have taken into account or omitted to take into account matters which he should have taken into account. Mr Barker has limited his submission to the contention that the learned Magistrate's sentence and order for compensation should not be allowed to stand because they are in the circumstances of the case so clearly excessive that injustice has been done: in other words - that the sentence was manifestly excessive or wrong in principle (see Archbold's Criminal Pleading Evidence and Practice, 1993 edition, Vol. 1, paragraph 7-151/2 and the cases there cited). Mr Barker submits that in all the circumstances the sentence and order of compensation were too severe in view of Mr Hobman's age, his previous good character and his ability to pay. He draws attention particularly to the fact that Mr Hobman's offences resulted from his youth and immaturity, his impatience to drive his Landrover which he had not yet had a chance to drive and which had been under repair for so long, and his lack of driving experience. He also draws attention to Mr Hobman's good character, his full co-operation with the Police and his ready admission of his offences.

It is clear from the papers submitted to me that in arriving at his sentence the learned Senior Magistrate made use of the

schedule of suggested penalties issued by his predecessor, Mr Wood, two years earlier as a guide to the justices when dealing with offences under the Road Traffic Ordinance.

In the present case, the Senior Magistrate's sentence diverges from the suggested penalities in so far as Count 1 (driving recklessly) is concerned by increasing the period of disqualification from the suggested 6 months to 12 months and in Count 3 (driving without insurance) by increasing the suggested fine of £200 to £300. In addition he ordered that the defendant be disqualified for 12 months in respect of Count 3, but that this should be concurrent with the disqualification order in respect of Count 1.

Mr Barker does not question the periods of disqualification ordered by the Senior Magistrate and I can see no reason to interfere with his order.

Mr Barker does, however, question the amount of the fines (£800 in all) when considered together with the amount of compensation ordered (£661). (Mr Barker also questioned the amount of £492 charged by C.M. & F.J. Ford for the repairs to the damaged Landrover no F140. He conceded, however, that it was really now too late to dispute this amount in view of the fact that it had been paid; and I think he was right to do so.)

As Mr Barker has pointed out, it is clear both from Mr Wood's "Suggestions for Assessing Penalties" and from the English Magistrates' Association's similar "Suggestions for Assessing Penalties" (on which Mr Wood's guide would clearly appear to be based) that the "Suggestions" are to be regarded as no more than a guide, and in each case the introductory page to the guide sets out the considerations to be taken into account in arriving at an appropriate sentence.

As this was a case of a multiple offender, it would have been open to the Senior Magistrate to take the course suggested in the final

paragraph of Mr Wood's guide and, after inquiring into the defendant's means and determining the amount he considered the defendant should pay in compensation, to fix a total amount of fines in respect of the three offences committed by the defendant in the light of the defendant's ability to pay, even though that total was less than the total which would result if the penalties suggested in the guide for each of the offices committed were added together (see, too, section 44(10) and (11) of the Criminal Justice Ordinance 1989). This could have been suggested to the court by counsel appearing for the defendant at the hearing, but it was not, and the learned Senior Magistrate, having inquired into the defendant's means, appears to have decided on the fine he considered appropriate for each offence, having regard to his predecessor's guide, and to have added to this the amount sought by the prosecution in compensation, arriving at a total of £800 for the fines and £661 in compensation - £1,461 in all.

The learned Senior Magistrate cannot in my view be criticized for adopting the course he did. He had clearly satisfied himself that the defendant was able to pay both the compensation and the fines he considered appropriate. These were serious offences, and while one can to some extent sympathize with Mr Hobman's desire to drive his Landrover after so long a wait, he should have realised after his first attempt to do so and certainly after his second attempt and damaging the power transformer, that he was not competent to do so and that to continue to try to drive the vehicle constituted a danger to himself and the public. His irresponsibility in persisting in driving his Landrover into Stanley was aggravated by his doing so knowing that he was driving when uninsured.

In my view it cannot be said that the sentence passed by the learned Senior Magistrate in this case was manifestly excessive, Sentencing is a matter of discretion for the trial court and it is not for me in exercise of my powers of review to tinker with the sentence passed by the court of trial when that discretion has been properly exercised.

Accordingly I can see no reason for interfering with the amount of the fines which Mr Hobman was sentenced to pay or otherwise with the learned Senior Magistrate's sentence or order in this case.

**Sir Renn Davis**
**Chief Justice**

**27th June 1994**