

MC/CRIM/66/08

Before the Magistrate's Court:

R v Shaun Christopher May

Count: Causing death by Reckless Driving

Plea: Not Guilty

Issues: Denies recklessness

Summing-up

I do not have to decide every point which has been raised; only such matters as will enable me to say whether the charge laid against the defendant has been proved. I have done that by having regards to the whole of the evidence including the agreed/admitted evidence and forming my own judgment about the witnesses, and which evidence is reliable and which is not.

Defendant gave evidence

The defendant has chosen to give evidence. I have judged that evidence by precisely the same fair standards as I applied to any other evidence in the case.

I have not held it against the defendant that he came from the dock to give his evidence, as opposed to coming through the door of the court as have other witnesses.

All witnesses, and that includes the defendant, the police officer and other witnesses, entered the witness box to give their evidence on a level or even basis. They gave their evidence, and that evidence is tested by cross-examination. I saw and heard the witnesses and have assessed them – not only in relation to what each has said to me, but also that way they have said it.

I have made allowance for the mistakes that are made by witnesses in the genuine belief that they are correct in what they are saying; also for a witness' nervousness in court. It is not an easy place to remember the facts after 12 months have elapsed.

I have decided this case only on the evidence which has been place before me. I am entitled to draw inferences, that is to come to common sense conclusions based on the evidence which I accept, but I may not speculate about what evidence there might have been.

The facts of this case are my responsibility. I have taken account of the arguments in the speeches of the advocates, but I am not bound to accept them.

Burden and Standard of Proof

Burden of proof

In this case the prosecution must prove that the defendant is guilty. He does not have to prove his innocence. In a criminal trial the burden of proving the defendant's guilt is always on the prosecution.

Standard of proof

How does the prosecution succeed in proving the defendant's guilt? The answer is – by making me sure of it. Nothing less than that will do.

The Law

In this case, in order for the defendant to be convicted of the charge of causing death by reckless driving, the Crown must make me sure that he drove a motor vehicle in such a manner as to create a risk which was obvious and serious according to the standard of the ordinary prudent motorist, of causing physical injury to some other person who might happen to be using the road, or be in close proximity to the road, or of doing substantial damage to property, and that he did so either without having given any thought to the possibility of there being any such risk, or, having recognised that there was some risk involved, he had nevertheless gone on to take it.

The offence is the only motoring offence recognised by Falkland Islands Law which includes the element of causing death. Unlike England and Wales, there is no offence of causing death by careless driving in this jurisdiction. It does not follow that an

incident of driving which results in death must have involved recklessness; each element of the offence must be proved for a conviction to result.

The standard of the ordinary prudent motorist is a question of fact for the Court. It must necessarily take account of driving conditions in these Islands, and in particular on the roads in and around Stanley. Those roads are not of the same standards as many of the roads in England and Wales, and factors such as wind and weather are often more significant to driving here than elsewhere. An ordinary and prudent motorist takes account of all of these factors when driving, and tailors their driving accordingly, by exercising an appropriate level of care, whilst at the same time progressing their journey. The standard is that of a reasonable user of the roads, and does not import any exceptional level of caution or nervousness.

There is a clear and important distinction between being careless and being reckless. Carelessness is a standard of driving which falls below that of a reasonable, prudent and competent driver in all the circumstances; it may be inadvertent, and it need not be far below the standard. In many cases the lack of care would prompt an outside observer to say “there, but for the grace of God, go I”.

Recklessness requires both the creation of a risk (which is both obvious and serious) of injury or damage by the manner of driving, and either a failure of the driver to recognise the risk, or a decision to take the chance of it occurring.

The Evidence

I turn now to summarise the evidence given in this case.

[Witness A] was in the front seat passenger in the Toyota Surf driven by the defendant. By the time they drove out of Stanley towards Surf Bay, the back seat was occupied by [witness B], [witness C], and Jon Felton. None of them was wearing seatbelts.

They were just out for a spin, and were accompanied by a Prada, belonging to Lucas Berntsen but being driven by [witness D] with [witness E] and [witness F] in the back seat.

[Witness A]'s evidence: As they joined the Bypass at the Dean Street junction, it was sleeting and misty. The journey was faster than she was used when riding with her mother, who she said is a careful and slow driver, but she was not uncomfortable about it. During the journey the two cars changed positions on several occasions by one overtaking the other, but she could not remember how many times; it was done by the front car slowing right down and the other one passing it; the last one could have been on the straight before the bend near Surf Bay; their car was in front of the other when it left the road. As the car came around the corner it started to slide towards the right, then the left, and then hit the ditch. She heard Jon say "...we're heading for the ditch". She was thrown out of the car through the back window.

[Witness B] was in the rear nearside seat behind [witness A]. He thought the other car was in front along the Bypass and he could not remember any overtakings until the bend. He had no concerns about the journey prior to that point and so was not paying attention to the speed. He thought that the Prada was on the bend when the defendant pulled alongside it, then the back slid to the right and the car started going left. In the crash he was thrown into the back of the car with [witness C].

[Witness C] was in the middle of the back seat of the defendant's car between [witness B] and Jon. He was not concerned by the journey prior to the crash. The Prada had been in front at first, and the defendant had overtaken it; he did not remember it slowing right down. When they got to the bend, the defendant's car was in front and the other about 20m or more behind. The last overtaking had been on the straight before the bend, and the Prada did slow right down; the defendant was in the middle of the road when he entered the bend. A few seconds later he felt the car slide to face towards town, and ended up in the ditch. The defendant was fighting the wheel, but had lost control of the back end.

[Witness E] was in the rear offside seat of the Prada, next to [witness F]. She thought they were doing 50-60mph on the Bypass, but she did not look at the speedometer;

she said she had been a bit bothered by the speed and the overtaking. There were about three overtakings. The last one started a few metres before the bend and continued into it. When the defendant's car appeared in front of theirs it started shaking just before it regained the nearside; the front wheels hit the nearside gravel and it spun around and went into the ditch.

[Witness F] said it was raining, and the roads were quite wet and icy. The Prada was in front on the Bypass. He was sitting in the rear nearside seat, and glanced at the speedometer; they were doing 80kph along the Bypass (approximately 50mph). He saw only one overtaking, on the corner by Surf Bay. The Prada was going very slowly, about 40kph (approximately 25mph) and the Surf passed them very slowly in the first quarter of the bend. Then it started to slide and the front was pointing left; there was a correction and it went into the ditch. They were about 20-30m behind at that point.

Supt. Elliot drove to the scene; it was cold, and had been sleeting; the road surface was wet but not particularly slippery; the wind was not strong by local standards. The road was totally dark. The Surf was in the ditch and the nearside rear wheel was missing. The road is not an accident blackspot; the bend is a moderate one. Forward visibility at night is for some distance.

Shaun May was interviewed 8 days later. He was doing 30mph along the Bypass, increasing to 40mph when he overtook the Prada; the car felt fine and he was not aware of any icy or slippery patches on the road. He had overtaken and regained his side of the road a couple of car lengths before the corner. The back of the car skidded right, then jerked hard right and it went into the ditch. He had been in 2-wheel drive with overdrive on. He thought he lost control because he hit an icy patch and then a dry patch. He denied that speed had contributed to the accident. That night the conditions were less than perfect and he thought he was exercising appropriate care.

Shaun May gave evidence. He passed his driving test in September 2007 having driven in Camp for some years; the Surf was his second car, and he had had it three months before the incident. There were three overtakings, each time the front car slowed right down. The last one was on the straight bit before the tight curve. The

Prada had slowed to a crawl, and he had probably regained his side when the back slid smoothly right and the front was facing the harbour, then turned right; he tried to steer away from the ditch. They had not been messing around. He thought the road was flat where he overtook.

Findings of Fact

1. There is no evidence that anything which occurred before the journey to Surf Bay contributed to the alleged offence.
2. There is no evidence that excessive speed was a contributory factor to the alleged offence.
3. There is no evidence that the cars had been racing prior to the crash.
4. There is no direct evidence that the road surface at the bend was icy at the time of the incident, and the witness' reference to ice is mere speculation.
5. There has been no evidence to identify marks on the road and surrounding area which are alleged to have been caused in the incident, and no explanation of those markings on the agreed plan, and any attribution of those marks to either vehicle is therefore speculation.
6. The evidence as to the position of the final overtaking manoeuvre is to some extent contradictory, and I cannot be sure that it did not take place on the straight part of the road before the bend.
7. Given that the incident took place at night when visibility was for some distance, I cannot be sure that the final overtaking created an obvious and serious risk of injury or damage, despite the consequences which followed it.

Verdict

It therefore follows that the Crown has not proved an essential element of the alleged offence, and accordingly the defendant is Not Guilt of causing death by reckless driving.

John Trevaskis
Senior Magistrate
1st May 2009