



**In The Supreme Court of Bermuda**  
**APPELLATE JURISDICTION**  
**2024: No. 39**

**BETWEEN:**

**DENNIS WEBB**

**Appellant**

**-and-**

**FIONA MILLER (POL. SGT.)**

**Respondent**

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**Before:** The Hon. Mr. Justice Patrick Doherty, Assistant Justice

**Appearances:** Ms. Elizabeth Christopher for the Appellant  
Ms. Paula Tyndale for the Respondent

**Date of Hearing:** 30<sup>th</sup> June 2025

**Date of Judgment:** 21<sup>st</sup> August 2025

**Date of Reasons:** 21<sup>st</sup> August 2025

**JUDGMENT**

**Introduction**

1. Mr. Webb appeals his conviction of causing bodily harm by driving without due care and attention under section 37A of the Road Traffic Act 1947. He asserts that the Learned Magistrate erred in finding that he had failed to keep a proper look out as the basis for convicting him.

### **Background Facts**

2. The circumstances of this case are unfortunate. On March 13<sup>th</sup> 2016, just before dawn, Ms. Farrell was walking in a southerly direction crossing Spurling Hill on the north side of Crow Lane. As she was approaching the other side of Spurling Hill in the westbound lane, she was struck by the Appellant's motorcycle as he was entering the westbound lane of Spurling Hill from Crow Lane. Ms. Farrell was immediately knocked to the ground and suffered a 12 inch laceration to her left calf and a broken left wrist. Both injuries required surgical repair.
3. Before she was struck, as Ms. Farrell was crossing the eastbound lane of Spurling Hill Road, a taxicab with it's headlights on was approaching her travelling eastbound on Spurling Hill. The taxi cab waited for Ms. Farrell to clear the eastbound lane before proceeding. The parties agree that the weather was clear, the road conditions were dry and traffic was light. It was also agreed that before the collision that the Appellant was not speeding nor driving in a reckless manner.

### **Issue on Appeal**

4. The Appellant argues that the Learned Magistrate erred in finding that he failed to keep a proper lookout when he would have had no reasonable expectation of encountering a pedestrian in that location.

### **Position of the Parties**

#### **The Appellant**

5. Ms. Christopher submits that the Learned Magistrate misapprehended the potential effects peripheral glare from the taxicab on the Appellant just before he struck Ms. Farrell and in support she referred to three scientific studies on peripheral glare which were introduced on appeal. She further submits that on appeal it is permissible for the court to reconsider the facts found by the Magistrate and, given the facts surrounding the accident, it would be unsafe to support a conviction primarily because of the actions of Ms. Farrell of crossing the road where there was no pedestrian crossing.

#### **The Respondent**

6. On behalf of the Respondent Ms. Tyndale argues that the Learned Magistrate considered all relevant evidence in reaching his decision and correctly applied the legal principles to his factual findings in this matter. She submits that the scientific studies are of little assistance in this matter as there is no expert opinion evidence provided in support which could show how the findings in the studies apply to the circumstances of this case.

### **Magistrate's Reasons**

7. The Learned Magistrate's reasons are comprehensive. He thoroughly analyzed all the evidence in this matter. In addition to summarizing the prosecution witnesses in direct examination and in cross-examination, he analysed the CCTV footage which captured the accident. A portion of his reasons at paragraph 30 is particularly relevant:

*"In the very next frame (at 06;25:58.778) the Complainant is squarely walking in the middle of the Defendant's left (westbound) lane of Spurling Hill; the Defendant's motorcycle is clearly heading straight for her three-quarters of the way across the east bound land of East Broadway/Crow Lane, having cut the corner..."*

8. At paragraph 32 of his reasons he found that the CCTV footage revealed that as the Appellant started to make his turn onto Spurling Hill that the Complainant was still clearly visible. The photographs which are found in the record at pages 13-15 are clear depictions of the collision taken from the CCTV footage of the event.

9. In addition he thoroughly considered the evidence of the Appellant. At paragraph 60 he found that the Appellant agreed that the oncoming taxi lights did not affect his vision in any way because he was focused on where he was going. At paragraph 61 he rejected the Appellant's assertion that the Complainant came out of nowhere. He noted at paragraph 64 that the Appellant said he was not focused on pedestrians, only cars, at that junction adding:

*"No disrespect but why would I be looking for someone to cross here"*

10. The Appellant also accepted that he was not familiar with the Traffic Code Handbook. At paragraph 66 the Magistrate summarized the Defendant's evidence as follows:

*"It was then suggested to Mr. Webb that his driving on this occasion fell below the standard of a reasonably competent and careful driver to which he replied rhetorically "What because I didn't pay attention to see if a walker was coming across the front of me that I*

*generally wouldn't see that location?" However, the Defendant then stated that "yes, that (he) would take some fault" in the collision..."*

11. He then went on to summarize and consider the applicable statutory and case law. Neither party takes issue with his approach to the law. He considered a variety of authorities which hold that if a defendant's conduct falls below the standard of a reasonably prudent driver in the circumstances of the case then a conviction for of careless driving is merited. He also recognized correctly that momentary inattention can, depending on the circumstances of the case, amount to the offence of careless driving.
12. After considering law the Magistrate made a series of factual findings which I summarize as follows:
  - (i) The road was dry and in good condition.
  - (ii) It was not yet daylight but there were streetlights illuminating the junction.
  - (iii) There is no suggestion that the Defendant was travelling at excessive speed and the roadway was clear of traffic.
  - (iv) There was nothing impeding the Defendant's view of what is clearly a relatively straight carriageway and the Complainant was clearly visible in the road from some distance away as the Defendant was approaching the intersection.
  - (v) The Defendant agreed that the glare from the taxi's headlights which was travelling in the opposite direction did not affect his vision nor should they have.
  - (vi) That he is unable to accept the Defendant's 'evidence that he was focusing on the westbound lane of Spurling Hill as he made his turn and it is inconceivable that he was keeping a proper lookout.
  - (vii) That the Defendant agreed that he would take some fault for the collision.
13. The Magistrate's ultimate finding is found at paragraph 75 of his reasons:

*"The Defendant's failure to keep a proper lookout is evident from the fact that, he failed to see the Complainant. I'm quite satisfied that failure by Mr. Webb to keep a proper lookout fell below the standard that would be expected of a competent and careful driver".*
14. The Magistrate then found him guilty of the offence charged.

### **Studies on Glare**

15. Ms. Christopher, in support of her position, submitted three scientific studies on how glare can impair visual functioning<sup>123</sup>. The studies were not placed before the Magistrate and were advanced in the first time on appeal. Subsection 16(2) (e) of the Criminal Appeal Act 1952 reads:

#### **Hearing of Appeals**

*16 (2) If in connection with the hearing of any appeal, upon the Application of the Appellant, or (subject as hereinafter in this subsection provided) of the respondent or any person made an additional party to the appeal, it is made to appear to the Supreme Court that in the interest of justice it is reasonable to do so, the Court shall supplement the procedure mentioned in subsection (1) by any or all of the following means that is to say,-*

...

*(e) by ordering or allowing the production and the examination at the hearing of the appeal of any document, exhibit, article or thing, whether or not it was in evidence in the proceedings before the court of summary jurisdiction;*

...

16. Accordingly a wide discretion exists to consider a variety of new material on appeal under the Act. I've decided to give consideration to Ms. Christopher's arguments based on the studies she provided. Ms. Tyndale did not object to the consideration of the scientific studies but rather submitted they were of little assistance without accompanying expert opinion.
17. The one proposition that studies stand for, which is suggested is applicable to the matter before me, is that humans experience glare in their peripheral vision and that glare can adversely impact one's overall visual performance. Additionally, subjects who experience glare from the periphery, tend not to experience discomfort as one would when experiencing glare directly in front of them.

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<sup>1</sup> Cassado, Avila, Collados and Ares: A Study on Disability Glare Vision in Young Adults. (Scientific Reports) (2022)

<sup>2</sup> Wu, Liu, Xu, Sun and Xiao: Reduced Contrast Sensitivity Function in Central and Peripheral Vision by Disability Glare (Perception) (2020)

<sup>3</sup> Terai, Iwamoto and Akashi. Veiling Luminance caused by a Peripheral Glare Source on Extra-Foveal Vision. (Journal of Science and Technology in Lighting) (2017)

18. Based on this finding, Ms. Christopher submits that the reason why the Appellant did not see the Complainant directly in front of him as she crossed the road was due to him experiencing the effects of peripheral glare. In such circumstances he would not have been aware of the glare and could only state at best that he didn't see her.
19. On behalf of the Respondent, Ms. Tyndale suggested that is not for counsel or the Court to make sense of the studies and apply them to the circumstances surrounding this appeal. She says neither the Court nor counsel have the training or expertise to properly interpret and apply the concepts contained in the studies.
20. She also made reference to the Magistrate's findings that the Appellant did not follow standard driving procedure and cut the corner when he made his turn. She questions whether the glare from the taxicab's headlights would've affected him at all had he remained in his lane up to the recommended turn line. She made reference to paragraphs 37 and 38 of the Bermuda Traffic Code Handbook ("the Code") which is a schedule to the Road Traffic Act 1947:
- "37. When turning to the left, keep as close as practicable to the left-hand edge of the carriageway.*
- When turning to the right, bear to the centre of the road before making your turn, and make your turn so that the vehicle is outside to the left of the centre of the crossroads or of the road junction.*
- 38. Never cut corners; and where there is a yellow line marker keep to the left or near the side of the yellow lane marker except where compelled by emergency or a stationary obstruction or by approaching pedestrians to cross to the right or offside. If you are compelled across the right or offside, you must exercise the greatest care."* (My Emphasis)
21. I agree with these submissions, this Court does not have the necessary training to properly interpret the studies submitted by the Appellant and draw proper conclusions from them. They all are highly technical in nature and it would be improper in my view to try to apply the studies' findings to this particular case without the assistance of expert opinion.
22. In addition, it is likely an expert would need to have regard to the many variables present in this case which could have affected the Appellant's vision. For example the lighting from the

streetlights, the cycle's headlight and the Appellant's positioning in relation to the other vehicle's lighting as he cut the corner to make his turn, are all factors that could be considered. Before any meaningful weight can properly be attached to this evidence, it is likely an expert would have to re-create a controlled experiment in order to replicate the conditions the Appellant faced when he made his turn and struck the Complainant. I'm certainly sympathetic to the Appellant's position that retaining an expert to study the intersection and interpret the scientific literature would be extremely costly and may not be within the Appellant's means for this matter. Nonetheless, I am left in a state that I'm unable to consider the studies in any meaningful way without the benefit of expert opinion.

23. Additionally it is doubtful that even if Ms. Christopher's hypotheses is correct regarding her client's inability to ascertain that his vision has been impaired by glare that it would assist his case in any way. Drivers have a duty to be extra careful when their vision is affected by bright sunshine or the glare of lights. The Code states as much in paragraph 17:

*"17. At night always drive well within the limits of your lights. When your headlights are dipped or extinguished be especially careful. If you are dazzled, slow down even to a standstill, especially if your windscreen is wet. Remember that cyclists and pedestrians, especially when wearing dark clothing, are often very hard to see in the dark" (My Emphasis)*

#### **The Inferences drawn by the Magistrate**

24. Part of Ms. Christopher's submissions focus on the inferences drawn by the Magistrate in this matter. She submits that sitting as an Appellate judge that I am able to consider the evidence before the Magistrate and the inferences he has drawn to ascertain if the conviction can be supported. She cites the decision of Mr. Justice Ground in *Robinson and the Commissioner of Police* 1995 No. 22 and section 16(1)(a) of the Criminal Appeal Act 1952. She submits that if I were to do this I would find that the conviction of the Appellant was unsafe because her client was not speeding, not driving erratically, had his headlight on and he came upon the Complainant in circumstances where no reasonable person would expect a pedestrian to be since it was not a marked pedestrian crossing. I agree with Ms. Christopher's description of my legal authority but not her suggestion that the Appellant had no reason to expect a pedestrian at that location. Drivers should always be on the lookout for pedestrians.

25. Ms. Christopher, not without some justification, cast much blame upon the Complainant in this case for crossing the road in the manner she did which was not at a marked crossing and in dim light. I agree that if this were a civil matter she would likely bear some fault for her behaviour, however that fact does not absolve the Appellant if it is proved that he drove in contravention of section 37A of the Road Traffic Act 1947. This has been clearly held to be the case by the Bermuda Court of Appeal.
26. In *Mizrachy and The King* Criminal Appeal No. 13 & 14 of 2024, one of Mr. Mizrachy's grounds of appeal concerned his conviction for the offence of careless driving in Magistrate's Court. In this matter the Complainant safely overtook Mr. Mizrachy's vehicle then Mr. Mizrachy decided to pass the Complainant's vehicle when it was unsafe to do so and his vehicle collided with the Complainant's vehicle as he was overtaking it. One issue raised on appeal is that the Magistrate failed to consider the Traffic Code and ascribe liability to the Complainant for crossing the yellow line when she did. The Court clearly held that any breach of the Code by the Complainant is not germane to the consideration as to whether the Defendant drove carelessly.
27. After citing section 48 of the Road Traffic Act 1947 for the proposition that the Code may be relied upon in Criminal or Civil proceedings to establish or negative liability, the Court found in the second part of paragraph 23:
- "The Code was wholly irrelevant in relation to the Complainant's overtaking, because her liability was simply not in question in the trial of a careless driving charge against Mr. Mizrachy. So how the Magistrate or Judge dealt with the Code (or failed to deal with the Code) cannot possibly provide any basis for setting aside the conviction which was entered in the Magistrates' Court and affirmed by the Supreme Court."*
28. The Court considered the Magistrates comments and stated at paragraphs 24 and 25:
- "25. The Judge held as follows:*
- "The Appellant attempted to rely heavily on the Road Traffic Handbook believing erroneously that this was a binding legislation. Which it is not. It is merely a useful tool in proper driving techniques."*
- This finding was fundamentally sound even though the last sentence could easily be construed as suggesting that the Code has no legal significance at all.*



*It is more than a “useful tool” in driving “techniques”. It is a useful tool for establishing criminal or civil liability in cases where the manner of driving is legally relevant. But the status of the Code as an issue in this case is completely overshadowed by the fact that the purpose for which Mr. Mizrachy sought to rely upon the Code (the liability of the Complainant) was legally irrelevant”.*

29. In the matter before me the Learned Magistrate did properly have regard to some sections of the Code when considering the evidence of the Appellant. In paragraph 65 of his decision he made note that the Appellant was not familiar with the Code and was not looking out for pedestrians at the location where he hit the Complainant. This is contrary to paragraphs 23 and 27 of the Code which requires drivers to “remember that you cannot be certain of the movements of pedestrians” and to “be prepared to meet pedestrians...coming toward you on your own side of the road”. These breaches of the Code, combined with the Appellant’s admission that he would take some fault for the accident is strong evidence in support of the Magistrate’s finding that the Appellant was not keeping a proper lookout for the Complainant at the time of the accident and was guilty of the offence.
30. Additionally there are the still photographs extracted from the CCTV footage, referred to by the Magistrate which depict the Appellant’s cycle heading directly toward the Complainant moments before the collision. In my view these photographs are powerful evidence of inattention on the Appellant’s part at the material time. It is difficult to see how the Appellant, who was under a duty to keep a proper lookout for pedestrians as he is required to do under the Code and who claimed he was paying attention to the road in front of him, could not have seen the Complainant in the middle of his lane before he struck her with his cycle. He essentially agreed that he was not keeping proper lookout when he admitted that he bore some responsibility for the accident and admitted he was not looking out for pedestrians at that location as he should have been.

### **Disposition of this appeal**

31. For the reasons stated I would dismiss this appeal. The Magistrate embarked on a comprehensive analysis of the evidence and the law in relation to this case. There is ample evidence to support his finding of guilt in this matter. Despite the able submissions of Ms. Christopher on the potential effects of glare, I see no basis to overturn the Magistrate’s

findings in this matter. Given the evidence before him I see no reason to question the inferences he made nor his ultimate finding. I see no palpable error on his part.

32. Appeal dismissed.

**Dated the 21<sup>st</sup> day of August 2025**



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**The Hon. Mr. Justice Patrick Doherty**  
**Assistant Justice**