YAM Pg Muda Abdul Mu'min Ibni DYTM Paduka
Seri Pengiran Perdana Wazir Sahibul Himmah
Wal-Waqar Pengiran Muda Mohamed Bolkiah

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No 5 of 2014)

Hairol Arni Majid, J.
21st June, 2014.

Road traffic – dangerous driving – defendant tailgating behind VVIP's car in a motorcade – driving in excess of prescribed speed limit – defendant has no driving licence – whether defendant being a VIP has the skilled and experience of a motorcade driver – objective test of dangerous driving – whether the magistrate had amended the charge – whether the magistrate had used the correct objective test – whether the magistrate erred in not accepting the expert report – whether Section 158 and Section 168 of the Evidence Act were invoke -

Roy Prabhakaran (Messrs Sankaran HaliM) for the Appellant.
DPP Aldila Bte Hj. Mohd. Salleh and DPP Christopher Ng for Public Prosecutor/Respondent.

Cases cited in the Judgment:

Emran bin Salleh v PP MA 54/95/01
Fradd v Brown & Co Ltd (Privy Council Appeal No.81 of 1916) 1918 UK PC 44
Lim Chin Poh vs Public Prosecutor (1969) 2 MLJ 159 at 160
Lim Hong Eng (2009) 3 SLR ® 680
Lim Ye Heng v PP MA 344/94/01
Ng Soo Hin v PP [1994] 1 SLR 105
P v Brown (K) 79 CAR 115
Public Prosecutor vs Ang Kian Wee (2003) SGD 93
Pg. Mohd. Ariffin Pg Hj Ismail v PP (Criminal Appeal No.136 of 2002)
R v Budniak [2009], EWCA, Crim 1161
R v Coventry [1938] SASR 79
R v Hendriksen [2007] SASC 306
Regina V Evans [1963] IQB 412
Sundara Moorthy Lanketharan v PP [1997] 3 SLR 464
Wang Yeou Liang Thomas v PP MA 143/98/01

Hairol Arni Majid, J.:

Introduction

On the 11th January 2014, the appellant was convicted after trial of an offence of dangerous driving contrary to section 28(1) of the Road Traffic Act (RTA) Chapter 68. At the start of the hearing below he pleaded guilty to driving without a valid license under section 16 of the RTA. He was sentenced to a fine of $2,500 or 2 months imprisonment sentence in default of payment and imposed a 12 months disqualification from holding or obtaining a driving licence and $500 or 2 weeks imprisonment in default of payment respectively. The appellant appeals against his conviction on the dangerous driving charge while the prosecution / respondent cross - appeal against the inadequacy of the sentence imposed.

Background of the case

The facts of the case are quite peculiar and have given rise to interesting issues on appeal. On the afternoon of 30th October 2012, the appellant was driving his Mini Cooper on the Tungku/Jerudong Highway heading towards Jerudong when he was alerted to the presence of a motorcade police prowlers who had cleared the traffic to the left side of the road in order to create space for His Royal Highness Crown The Prince's (DPMM) vehicle to pass through on the right lane. In order to avoid the heavy traffic on the road, the appellant decided to follow the motorcade and latched on to behind a Volvo escort car. As the motorcade approached the DST, turn off, he overtook the Volvo escort car and placed himself directly behind the DPMM's car at a speed of between 100 km/hr. to 120 km/hr. at the gateway and about 120 km/hr. to 130 km/hr. for the rest of journey to Jerudong Mini Stadium. It is the Magistrate's finding that the manner is which the appellant had latched on to the DPMM's car by a mere a car length at that speed amounts to a dangerous driving which is one of the contentious points in this appeal.

Grounds of appeal against conviction

The grounds of appeal are set out as per the petition of appeal and further petition of appeal, which are in the following terms.

1. The Learned Magistrate was wrong in law and/or fact when he accepted that the particular of *"following directly behind the vehicle driven by the Senior member of the Royal Family at a distance of one car length"* on its own could and did amount to dangerous driving.

2. The Learned Magistrate was wrong in law when he accepted that ALL the particulars of the dangerous driving as contained in the charge need not be proven and that there was no requirement for the said particulars, which are the elements or ingredients of the charge, to be proven conjunctively.

3. The Learned Magistrate was wrong in law to convict the appellant of dangerous driving simply for following the Crown's Prince's car at a distance of 1 car length when there was no other adverse evidence against the appellant to support such a finding.

4. The Learned Magistrate was wrong in law and/or fact when he disbelieved the appellant's explanation that he followed the Crown Prince's car by keeping diagonally away from the rear and that it was his common practice without giving proper and valid reasons for doing so, namely:

    a) When he concluded that if the appellant kept diagonally to the "right of DPMM's car" PW7 would not only see the left front lamp but more of the appellant's car, and/or

    b) When he decided to disbelieve the appellant's explanation that he kept diagonally away from the rear of the Crown Prince's car when PW7 agreed in evidence that the appellant, whilst following the Crown Prince's car, would move completely away from the back of that car by either moving to the left or to the right so that it would not be directly behind the Crown Prince's car, and/or

    c) Alternatively when he failed to consider the glaring inconsistencies of the evidence of PW7 on the vital issue of whether the appellant's car moved from left to right behind the Crown Prince's car, and/or

    d) When he concluded that PW7's evidence should be accepted in the "absence of any major inconsistency" notwithstanding the fact that it was clear from the evidence that there was certainly reasonable doubt from PW7's evidence as to whether the appellant remained in one position behind the Crown Prince's car.

5. Under such circumstances the Learned Magistrate wrongly accepted PW7's inconsistent evidence over the consistent evidence of the appellant when the benefit of doubt should have been applied in favour of the appellant.

6. Further the Learned Magistrate was also wrong to conclude that PW7's evidence should be accepted in the "absence of any major inconsistency" when PW7's evidence never at any stage dealt with and was completely silent as to whether the escort car had tried on numerous occasions to regain its position behind the Crown Prince's car, which was a crucial part of the prosecution's case. As the burden lies with the prosecution to prove their case beyond a reasonable doubt, PW7's silence on this point is clearly inconsistent with the prosecution's case and should have been scrutinized more closely.

7. The Learned Magistrate failed to consider the fact that the appellant could not have simply remained in one position following the Crown Prince's car at a distance of one car length for over 7 km when it was the prosecution's case that

the escort car, after being overtaken by the appellant, tried to regain it's position behind the Crown Prince's car but was prevented and blocked out by the appellant. Such a maneuver would have entailed both cars moving from side to side. The conclusion therefore was unfounded and without proper basis.

8. The Learned Magistrate, after rejecting the prosecution's case on the alleged overtaking and concluding that the prosecution witnesses were not credible witnesses, failed to consider the appellant's defence that he was allowed into the motorcade, and therefore was wrong to conclude that he needed to move *"to the side for the whole motorcade to pass through"* if he wanted to avoid being directly behind the Crown Prince's car. The reasoning as contained in the last paragraph of the Judgment at page 31 is not only inconsistent with his earlier stated conclusions but also fall short of being proper and acceptable.

9. The Learned Magistrate misdirected himself when he concluded that the appellant's explanation of what he did to avoid being directly behind the Crown Prince's car was an "afterthought" when that was never the prosecution's case and/or there was absolutely no basis to come to such a conclusion on the evidence before the Honourable Court.

10. The Learned Magistrate misdirected himself in law by way of non-direction when he failed to properly consider the correct burden and standard of proof as to whether the appellant had raised a reasonable doubt. After disbelieving the appellant, the Learned Magistrate found the appellant guilty without considering whether, notwithstanding his finding, the appellant had nevertheless raised a reasonable doubt.

11. The Learned Magistrate misdirected himself wrongly in fact and/or law when he concluded that there was no evidence that the appellant was a *highly skilled and trained* motorcade driver as that was never the appellant's case. In fact it was the appellant's case that he had *experience in motorcade driving* and was therefore familiar with how the motorcade works.

12. The Learned Magistrate misdirected himself when he misunderstood DW2's explanation as to why United Kingdom Highway Code and/or the Land Transport Department Curriculum and Guide to teach driving school (3rd Edition) would not be applicable in a motorcade situation.

13. The Learned Magistrate misdirected himself by way of non-direction when he failed to consider DW2's unrebutted expert opinion that the United Kingdom Highway Code and/or the Land Transport Department Curriculum and Guide to teach driving school (3rd Edition) would not be applicable in a motorcade situation.

14. The Learned Magistrate was wrong in law and/or fact when he speculated as to what could happen if the Crown Prince was to have to suddenly stop as the

primary reason for convicting the appellant of dangerous driving. Such a finding is not factual and is highly prejudicial to the appellant.

15. The Learned Magistrate was wrong to conclude therefore that the appellant, in a motorcade situation, was driving dangerously when he was on car behind the Crown Prince's car.

16. The learned Magistrate was wrong in law to convict the appellant on a seemingly amended/altered charge upon delivering the Judgment when such is not permissible by law and a serious miscarriage of justice has occurred.

17. The Learned Magistrate was wrong in law to convict the appellant on a seemingly amended/altered charge that was not read and explained to the appellant.

18. The Learned Magistrate was wrong in law to convict the appellant on a seemingly amended/altered charge without allowing the appellant the opportunity to recall and/or summon and/or examine witnesses if so required.

19. The Learned Magistrate was wrong in law to convict the appellant on a charge that was not preferred as per the charge sheet without stating under what provision of law he was relying on to do so.

Issues before this court

The grounds of appeals relied upon by the appellant are very much interrelated and interconnected. Save for some isolated issues, I will deal with them together. Mr. Prabhakaran for the appellant in his submission had summarized the 19 grounds into 6 main components and in this judgment the discussion of the issues will be adverted to these 6 groups.

1. *Failure to prove particular of the offence.*

The particular of the charge under the dangerous driving reads as follow

> ***"To wit, by approaching the motorcade of a Senior member of the Royal Family which was travelling in the same direction as you and ignoring the rear escort hazards lights signal not to approach the said motorcade, overtaking the rear escort vehicle at high speed and cutting into the rear escort vehicle's lane and thereafter following directly behind the Senior member of the Royal Family at a distance of less than one car length until the motorcade reached Jerudong Mini Stadium…."***

Mr. Prabhakaran submitted that the burden fell squarely on the prosecution to prove all the particulars in the charges in respect of the driving manner, which is dangerous to the public. In another word he pointed out that having regard to all the particulars,

it is the conjunctive nature of all the particulars that forms the dangerous manner in the charge. He impressed on the court that the discredited evidence of PW1, PW2 and PW9 had clearly left the prosecution's evidence found wanting on the issue of alleged overtaking at high speed and cutting into the escort vehicle's lane. These are both circumstances, which the prosecution had relied upon in the charge to establish the manner of the appellant's dangerous driving which went missing. Consequently, he submitted that each particular on its own render the proof of dangerous driving lacking.

Miss Aldila for the prosecution / respondent submitted that there is no requirement for the prosecution to prove each particular of the dangerous driving pleaded. Suffice that even if only one particular of the alleged dangerous driving is proved, a conviction could be secured. She cited *P V Brown (K) 79 CAR115* and *R V Budniak [2009], EWCA, Crim 1161.*

She impressed on the court that the Magistrate had taken into consideration of the facts that the appellant had followed DPMM's vehicle at a one-car length. The Magistrate had referred in his judgment to the Land Transport Department Curriculum Guideline as regards to safe stopping distances for vehicles at certain speed which she said reinforces the UK Guidelines on the matter. She argued that the Magistrate having considered the appellant's speed, the distance of his vehicle tailgating behind DPMM's at one car length travelling over a distance of some 7 km and being not a skilled or trained motorcade driver would have found himself insufficient time or space or wanting should anything untoward were to happened.

2. *Wrongly amending and / or altering the charge.*

Mr. Prabhakaran pointed out that the appellant is at lost at understanding on what provision of law was the trial Magistrate relying on when he convicted the appellant based on " the same offence where the vital particular in the charge allegedly had been altered / amended namely "less than one car by to one car length". He submitted this was a substantially amendment to the particular of the charge. He submitted that the trial Magistrate had done so without proper jurisdiction and authority as such the appellant was prejudiced into defending the original charge and was never offered the opportunity to have sight of the so called "amended charge" in order that he be allowed to exercise his right to recall witnesses or summons new ones.

Mr. Prabhakaran also submitted and demonstrated the working of the provision of Section 158, Section 168 and Section 170 of the Criminal Procedure Code (CPC), which I do not intend to repeat here in the judgment. Suffice to say that the gist of the argument was that the Magistrate was exercising his discretion under Section 158 of CPC. He said it was obvious from the judgment that the Magistrate could not have invoked the provision of Section 169 of the CPC, for there was no issue of attempt. He suggested that on the other hand if the Magistrate had meant to invoke Section 168 of CPC, it would mean that it has to be read together with Section 167 of the same which would entailed that a conviction has to be a on a different offence to the one the appellant is presently charged with, which is not the case here.

He submitted that the Magistrate lack of reasoning is unsatisfactory and without proper basis as a result, the exercise undertaken by him was flawed. He argued that the mainstay of the prosecution case lay in the alleged overtaking incident which formed the basis of the prosecution and for the trial Magistrate to convict on a "one car length distance" without the alleged overtaking incident would be incorrect.

In response, Miss Aldila submitted that, at no point during the trial, was the appellant not aware of the charge he was facing. She impressed on the court that the trial magistrate never at any time during the trial altered or amended the charge requiring the same to be read and explained again to the appellant invoking the provision of Section 158 of the CPC or allowing the opportunity for the appellant to recall witnesses by virtue of Section 162 of the CPC. She argued that the Magistrate had effectively convicted the appellant of dangerous driving for the act of tailgating at high speed at a distance of one car length as oppose to less than one car length.

3. *The Magistrate acceptance of PW 7's evidence and rejecting the appellant*'s.

Mr. Prabhakaran submitted that the Magistrate misunderstood the defence and failed to consider them properly. As regards the appellant's defence that he had followed the DPMM's car diagonally away from the rear of his car which was totally rejected by the Magistrate, he argued that the latter had misunderstood the appellant's explanation because the appellant's version was that he would be slightly to the right of the crown Prince's whenever possible so that he could have a better view of what is ahead when the left lane was clear enough. He submitted that there was evidence from PW7 himself that the appellant whilst following the Crown Prince's care would move completely from the back of the Crown Prince's car either by moving to the left or right behind the Crown Prince's car. The Magistrate he argued chose not to consider this evidence.

Another point which Mr. Prabhakaran submitted was that the Magistrate had failed to consider the full impact of his finding that the evidence of PW1, PW2 and PW 9 to be not creditworthy. He argued that having dismissed the testimony of the 3 witnesses' testimony, it would follow that the appellant would have been allowed into the motorcade and there was no reason for him to move "to the side to let the motorcade pass through". However he argued that the Magistrate was under the impression that the appellant had not been allowed into the motorcade after having found the prosecution version to be discredited.

Whether the crown prince had consented for the appellant to be allowed in or not, he argued that it would not be unreasonable assumption that the appellant was allowed in, based on someone's permission. Given there was no evidence to dispel such

reasons the inference Mr. Prabhakaran argued that the Magistrate had failed to consider this in his judgment.

By dismissing the appellant's explanation as 'only an afterthought' so as to escape liability", the Magistrate's finding he argued was flawed as the prosecution never at any stage during cross examination of the appellant challenged him on this issue.

Miss Aldila submitted that the Magistrate had rightly rejected the appellant's evidence as "only afterthought". This she argued had clearly been weighed against the evidence of the other witnesses, which is on findings of facts, which he was entitled to do.

As regards to the Magistrate dismissal of the appellants explanation as a mere afterthought, Miss Aldila submitted that given the appellant's version was not an account which was included in the police statement therefore the Magistrate's finding that this being an afterthought was fully justified.

4. *Failure to consider the correct burden on standard of proof.*

Mr. Prabhakaran submitted that the Magistrate had failed to direct himself to the proper burden and standard of proof in the face of conflicting evidence between PW7 and the appellant. He contended that there is nothing the judgment to indicate that the magistrate did direct himself on the essential point of law. He claimed this to be misdirection as the magistrate had failed to direct his mind not only to matters, which he believes to be true, but as well to the defence evidence, which he found to the contrary.

There was nothing in the judgment that the magistrate had considered the expert evidence and secondly having rejected PW1, PW2 and PW9's testimony in respect of the alleged over taking incident, the magistrate had by inference accepted the Appellants assertion that he was allowed in the motorcade. He argued that the magistrate was too quick to discount the possibility that the appellant's version may be the true one.

Miss Aldila argued that there was no misdirection as alleged by the appellant as to the standard and burden of proof out lead by the magistrate. She argued the magistrate had unreservedly disbelieved the appellant's testimony as such there is necessity for the magistrate to specifically state that appellant had not raised a reasonable doubt to the charges against him.

5. *Failure to consider the expert evidence.*

Mr. Prabhakaran submitted that the Magistrate failure to consider the defendant's witness expert amount to a non - direction on his part which leave a reassemble doubt on the part of the Court as what he would have decided had he directed his mind to this part of the evidence. He argued that the Magistrate has focused purely on whether

the appellant was considered as a motorcade driver and make him to be otherwise. He contended that the Magistrate never considered the fact about the appellant's upbringing and having experience in driving in a motorcade, having participated and driven in royal motorcade before as was the expert's evidence in cross-examination.

Miss Aldila argued that this was no evidence before the Court below to suggest the appellant was a highly skilled and trained motorcade driver and neither did the appellant progressed to be one. She submitted that the appellant experienced and familiarity in a motorcade situation by simply being a motorcade driver does not equate to "processing the requisite highly specialized skill of a motorcade driver"

6. *Magistrate applied a wrong test for dangerous driving.*

Mr. Prabhakaran submitted that the Magistrate had wrongly applied the test for dangerous driving. Citing the case of *Regina V Evans [1963] IQB 412* i.e. the objective test, which is to be directed to a jury. He said applying that fact to the present case, a member of the public seeing the appellant's car with its distinctive number plate being allowed into a royal motorcade would suggest that "there must be another member of royal family or friend even ".

He further submitted that driving close to anyone on it's own cannot amount to a dangerous driving. The magistrate's finding that if anything untoward were to happen, the appellant were not be in position to avoid a collision is not factual, at best speculative. He argued the Magistrate had applied a wrong test. He submitted that excessive fast speed alone, overtaking on the left, cutting across by itself do not amount to dangerous driving.

Miss Aldila submitted that it is not wrong in law for the Court to speculate as to what would happen if DPMM were to stop suddenly. She argued that the Magistrate had view the situation objectively by acknowledging the risk of the likelihood of a collision. She submits this had been the important consideration arrived at by the magistrate in deciding whether are not the appellant's driving was dangerous.

Conclusion

Section 291 of the Criminal Procedure Code Chapter 7 provides that

> *"No Judgment or Order of a Magistrate's Court shall be revised or set aside unless it is shown to the satisfaction of the court above that such judgment or order was either wrong in law or against the weight of the evidence or in the case of sentence, inappropriate in the circumstances of the case."*

It is trite law that the trial court had the benefit of observing the demeanors of the witnesses and at first hand the opportunity to see and evaluate them giving their evidence. Given this advantage the appellant court would be slow to disturb the trial's court finding of facts unless they are clearly reached against the weight of the evidence – see *Ng Soo Hin v PP* [1994] 1SLR 105, *Pg. Mohd. Ariffin Pg Hj Ismail v PP* (Criminal Appeal No.136 of 2002).

In *Sundara Moorthy Lanketharan v PP* [1997] 3 SLR 464, the court held in examining the evidence on appeal, the appellate court had to bear in mind that it had neither seen nor heard the witnesses and had to pay due regards to the trial judge's findings and reason therefore.

In the Privy Council case of *Fradd v Brown & Co Ltd* (Privy Council Appeal No.81 of 1916) 1918 UK PC 44, Earl Loreburn delivering the Judgment said:

> *"Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in questions of veracity, so direct and so specific as theses, a Court of Appeal will overrule a Judge of first instance."*

As regard the issue of the magistrate alleged amendment or alteration of the particular of the charge by substituting the words "less than one car length" to "one car length", the words one car length first appear during the examination in chief and re-examination by the prosecution of PW7, where he described the distance the appellant was following behind DPMM's car. It appears that the defence made no issue of the usages of this word to describe the distance. However, in cross-examination of the appellant, the prosecution used the term "less than one car length" in line with the particular in the charge.

It is clear to me that at no time was the appellant not aware of the prosecution proceeding along the line of PW7's testimony i.e. "one car length". There seems to be no basis for one to infer or suggest that the magistrate literally altered or amended the charge. I believe this to be the wrong assumption. To suggest that the magistrate had invoked Sections 158 and 168 of the CPC is wrong. It follows that at no point in time was the appellant prejudiced, because all along the charge was for dangerous driving among others for tailgating at a high speed at a distance of a car length as opposed to less than a car length.

Can it be said that the appellant was mislead in his defence. I do not think so. Simply put, as Miss Aldila amply submitted, "to argue otherwise would be to say that it is wrong for the court to convict a person of causing hurt by one punch when the charge alleges two".

Section 168 of the CPC clearly provides that a person charge with one offence can be convicted of another even though he was not charge for it. I do not believe the magistrate had this section in mind because this stipulates a different offence. In this case I believe the magistrate was not in error when he accepted the evidence of "one car length" instead of "less than one car length" in making his overall assessment whether the appellant's action or driving was dangerous.

It is also postulated that the mainstay of the prosecution case was based on the alleged overtaking by the appellant and conviction on a one-car length without the evidence

of overtaking would be wrong. I do not believe this argument to be correct. The particular in the charge specified that the appellant to be following behind at a distance of less than one car length. It seems to me that evidence to this effect on its own, justifies conviction, without having to tie it up with other evidence of dangerous act because the tailgating at a close distance in itself having regards to the condition of the road at the time may amount to dangerous driving to which the magistrate effectively convict the appellant with.

As regards the ground that the prosecution has failed to prove the particulars of the offence, it is not uncommon to frame charges and to particularise the manners of the alleged driving. Suffices that even if one of the alleged driving were proved, a conviction would ensure (*R v Brown and R v Budniak (supra)).* Thus, there is no necessity to prove all the particulars of the charge pleaded. On this issue the magistrate has this to say on the matter.

> *The Defendant submitted that the whole sequence of the particulars as contained in the charge will constitute dangerous driving and the prosecution have to prove all the elements as contained in the particulars. It is submitted that each element is either separated by a comma or the word "and" and this would mean that the elements are to be proven conjunctively and not disjunctively. Therefore, each element on its own cannot have been meant to be, and surely cannot on its own amount to dangerous driving in accordance with the charge. The Defence cited the case of* ***Lim Chin Poh vs Public Prosecutor*** **(1969) 2 MLJ 159 at 160**.
>
> *Prosecutor submitted that the case that the defence cited* ***Lim Chin Poh vs Public Prosecutor*** *(supra), can be distinguished with the present case is that in Lim's case, the appellant was charged under 2 limbs of dangerous driving namely* ***"at a speed and in a manner dangerous to the public"*** *and the court rightfully concluded that the prosecution has the onus of proving both elements of the offence charges.*
>
> *It is submitted by the prosecution that in the present case the defendant is charged with one element of dangerous driving namely* ***"in a manner which is dangerous to the public"****. Prosecuting further submitted that* ***"it is the manner of dangerous driving which is then particularized of specified in the charge following the words" "to wit"****.*
>
> *The prosecution further submits the case of* ***Public Prosecutor vs Ang Kian Wee*** **(2003) SGD 93** *where the court went on to consider the evidence and concluded that driving at speeds of 140 to 150 km/hr. was by itself driving in dangerous manner.*
>
> *In this case the charge was frame as follows:*
>
> *"... by driving ... in manner dangerous to the public ... to wit, by driving at an excessively fast speed, encroaching into the lane for on coming traffic before*

swerving back into flow of traffic and colliding into the right side of the rear of the motor lorry ..."

I am in agreement with the prosecution that the case law cited by the Defence is of no relevance to this present case as the charge is not frame as such.

I am in agreement with the prosecution that:

"though there is one offence of dangerous driving as a whole alleged here, the various specified, even when viewed in its own, each showed a falling below the standard of a complained of here can be argued to be a continuing one made up of several conducts, each of which can be considered dangerous in itself".

The case law cited by the prosecution is of more relevance to the present case.

I do not think one can find fault in the finding by the magistrate above. I believe that it is proper to frame charges and particularise the various manners of the offence as was in this case dangerous driving. Given that dangerous driving is a continuous offence or act, it suffices even if one of the particulars of dangerous driving is proved, the offence should be made out. In Budniak's case, the Court of Appeal held that a defendant could be convicted of dangerous driving if the prosecution could prove either the manner of driving or the state of the vehicle was dangerous. Whilst, in the Brown's case, the Court of Appeal held that

"Each ingredient of the offence must be proved to the satisfaction of each and every member of the jury. However, where a number of matters are specified in the charge as together constituting one ingredient in the offence, and one of them is capable of doing so, then court is enough to establish the ingredient that any of them is proved."

I am in agreement with the above cases and I believe they reflect the correct statement of law.

The expert testimony in this case was provided by DW2 (Peter Russ) who is an expert in VIP escort driving instructor with the UK government. The trial magistrate in his judgment acknowledges DW2's expertise but dismissed his evidence as being "*academic and rightly so concern about the security lapses of the escort car"* and found no relevance to the case.

The testimony of DW2 very much centred on motorcade driving situation where the drivers of the motorcade are presumed to be well trained and skilled driver, obviously on offensive and defensive driving. There was no evidence to suggest the appellant is a trained motorcade driver. There was however, a suggestion by DW2 that VVIP, or member of the royal family with years of driving in a motorcade could be familiar with how the motorcade works but short of suggesting that they could become a skilled motorcade driver.

I believe that being familiar and being skilled and experienced in certain field are too different things. I believe this was what the magistrate had in mind when he discounted the suggestion that the appellant could be a skilled and trained motorcade driver. In absence of such requisite skills and training as a motorcade driver, it was opened for the magistrate to conclude as he had done on the evidence before him. I do not think he could be faulted on this.

As much as DW2's evidence is relevant to motorcade situation especially on lapses and driver's reaction time, I believe the issue at hand was purely on whether the appellant's driving was dangerous given that he is not a skilled and trained motorcade driver nor had he any training of sort beforehand.

As to the alleged misdirection on the part of the magistrate as to the burden and standard of proof, in his judgment the magistrate had reminded himself of this. At the end of the judgment he concluded by saying that the prosecution had proven its case beyond reasonable doubt. I am incline to agree with Miss Adila submission that there was no necessity on his part to state that the appellant had not raise a doubt given that he had disbelieve the appellant's testimony. It is implied that he had found that the appellant has failed to raise a reasonable doubt of the prosecution's case.

Mr. Prabhakaran postulated that the magistrate had applied a wrong test for dangerous driving in arriving at his decision. He cited the test in *Regina vs Evan (supra)* and invited the court to apply the test in the case. He submitted if he were to apply the test to this case he concluded that a member of public objectively seeing the appellant following behind DPMM's car would have though *"that must be another member of the Royal Family or friend even"*.

The magistrate in his judgment reminded himself of the standard and the test in this case. On page 7 of the judgment he states,

> *"Thus, in order to secure a conviction the prosecution will now have to prove beyond reasonable doubt of the second element which I had stated above.*
>
> *It is clear from authorities cited by both parties that the test to be applied as to whether the Defendant had driven in a manner, which is dangerous to the public, is an objective test.*
>
> *The Defence is correct to submit that,*
>
> *"It is without a doubt that the offence of dangerous driving pursuant to Section 28(1) of the Road Traffic Act (Chapter 68) does not have to be related to death as is required in similar provisions in Malaysian and Singapore".*
>
> *It should also be noted that an offence of dangerous driving can be committed even though there is no accident or accident without fatality."*

At page 35 of the judgment he also states

> *"Looking objectively, there is a higher risk of collision if untoward incident to happen. Anything untoward can happen for example to the prowler in front of the VVIP which can cause the VVIP to stop suddenly and the question is can the Defendant stop on time taking into account the distance between his car and the VVIP car at that time and the speed that they are traveling? The Defendant took a risk at the expanse to the other road users at that time".*

Mr. Prabhakaran dismissed this test as pure speculation and not factual assessment of the evidence. In the context of which the magistrate had addressed this, I believe that it was concluded after having assessed the capability of the appellant, the speed of the vehicles and after acknowledging the condition of the traffic, appreciating that there would likely be a scenario that DPMM would have to brakes or stop suddenly, I do not think this is speculative at all. At best, I believe any reasonable experienced driver would conclude whether the maneuverer or manner of driving was dangerous or not. The objective test would have to include a reasonable learned and experienced driver in the circumstances of the case and not the public generally.

In *R v Hendriksen* [2007] SASC 306 the Supreme Court of Australia in its judgment citing *R v Coventry* [1938] SASR 79 states,

> *"The phrase "an ordinary person in the situation of the driver" was first coined by this Court in R v Coventry ("Coventry") – where the Court stated as follows:-*
>
> *fact to be proved in this case was that the defendant was driving in a manner which was dangerous to the public, and if it is necessary to attempt a definition we should say that driving in a manner dangerous to the public – means the act of driving in a manner which any ordinary person (in the situation of the driver) would recognize as dangerous, in the sense that it involves a risk of injury to others which exceeds the ordinary risks of the road-the commonplace incidents of the use of the highway in question under the conditions of modern transport by fast-moving vehicles. But in view of the arguments we should add that, according to the circumstances of the case, it may be necessary to dwell upon different aspects of this definition".*

There is so much to be said about dangerous driving and instances of dangerous driving. In dealing with cases such as this, the magistrate is compelled to address his mind that the issue at hand is whether an accused action amount to dangerous driving. This is what the trial magistrate did as is required of him by law and having considered the facts before him, I believe this is the only conclusion that he could arrived at.

The magistrate convicted the appellant solely based on the testimony of the PW7 who gave evidence that the appellant was "about one car length to DPPM's who saw the appellant's car from the side mirror. In cross-examination, PW7 was still adamant that the appellant was behind the DPMM's car. The magistrate noted in his judgment that DW2 tried to refute PW7's evidence but failed. He said at page 29 of the judgment,

> *"DW2 also tried to dispute the evidence of PW7 but however; he had not done any test to the evidence".*

He rejected the Appellant's defence totally. He address this issue or page 31 and 32 of the judgment as followers,

> *"I disbelieved the Defendant's evidence that he followed the Crown's Prince car by keeping diagonally away from the rear of his car and he did this as it is his common practice as long as he has space and if travelling fairly fast and he will be slightly to the right of DPMM's whenever possible so that he could have a better view of what is ahead when the left lane was clear enough. He also told the Court he avoids being directly behind the Crown Prince's car so as to provide him with sufficient time to react in the event anything untoward was to happen.*
>
> *If he is exercising what he said by keeping diagonally away and slightly to the right of DPMM's car whenever possible and avoid being directly behind the Crown Prince's car so as to provide him with sufficient time to react in the event anything untoward was to happen, PW7 would not only see the Defendant's left front lamp. He would be able to see more of the Defendant's car.*
>
> *Further if the Defendant is concerned about "to avoid being directly behind the Crown Prince's car so as to provide him with sufficient time to react in the event anything untoward was to happen" he would have moved to the side for the whole motorcade to pass through. His action is inconsistent with someone who is not in rush to go to his destination as what he had said. He told the Court that he wanted to beat the traffic and that is why he latched on the motorcade and ended up behind the VVIP's car. If he is not rushing he would not be behind the VVIP's car and would not be there knowing that to be in the motorcade would need the permission of the Crown Prince.*
>
> *Defendant by saying keeping diagonally away and slightly to the right of DPMM's car whenever possible and avoid being directly behind the Crown Prince's car so as to provide him with sufficient time to react in the event anything untoward was to happen, is only an afterthought so as to escape liability".*

In cross examination, PW7 was in agreement with the appellant in that whilst following DPMM's car, he would move completely away from the back, either moving to the left or to the right in order to avoid DPMM's car. However, I'm incline to agree with the respondent's submission that this must be read and view in the context as a whole on this issue. It is apparently clear that PW7 had earlier agreed on this upon being cross examined by the appellant but after having re-examined by the respondent he explained that the appellant only moved completely away behind DPMM's tail upon reaching the mini stadium when he apparently proceeded to head to the direction of the Polo Club.

I believe this was consistent with the Magistrate's finding above. I see no inconsistencies on the part of the PW7 evidence. In re-examination by the respondent, he clarified that throughout the journey from DST to the mini stadium, he was able to see the whole front of the mini. When asked how he was able to determine the mini was following at about one car length, he said he was only able to see the front left light because the appellant's mini was already close.

Once the Magistrate had ruled that PW1, PW2 and PW9 testimony to be not creditworthy, it is thus open to assume that the appellant was allowed to join in by the escort car. The rest of the evidence of the alleged zig zaging in the attempt to block the appellant never comes into play. As I had indicated earlier it was purely on the basis of PW7's testimony that the magistrate had arrived at the conviction. It seems to me while the magistrate is the right person to decide the credibility of the witnesses, he opted to believe PW7's version to that of the appellant and this, he is entitled to do.

The fact that the escort car made several attempts to regain its position behind DPMM's car in no way had eroded the strength of the prosecution case nor the creditability of PW7's testimony. For one, the magistrate had rule the testimony of PW1, PW2 and PW9 to be not credible therefore as I had indicated earlier, the issue no longer comes into play as far as the magistrate assessment of the case is concerned. Secondly, the appellant never questioned PW7 on this.

What is clear as regards to PW7's testimony is that due to the appellant's car closeness, PW7 was able to see through the left side mirror the appellant's car tailgating DPMM's car and that the appellant was consistently in that position throughout the journey until they reached the mini stadium area. As far as the suggestion that the appellant was moving side-to-side in order to avoid directly behind DPMM's, it is clear that this was based on the appellant own testimony, which the magistrate had rejected.

As regards whether the appellant action amount to dangerous driving, the magistrate in his final analysis had this to say,

> *"Now the Question is did the conduct of the Defendant amount to dangerous driving?*
>
> *prosecution and defence brought in their own experts for their case. Much of their evidence is academic and rightly so concern about the security lapses of the escort car. It is of no relevance to this case.*
>
> *The relevant part is the guideline provided by the Land Transport Department Curriculum and Guide to teach driving school (Third Edition) on the Distance Regulation in pages 68 and 69 and also the following behind According to Speed Regulation page 71 and 72.*
>
> *It has been highlighted earlier the test whether the Defendant had driven in a manner dangerous to the public is an objective test.*

It is held in Lim Hong Eng (2009) 3 SLR ® 680 *quoting Lim Chin Poh* (1960-1970) SLR (R) 483 *where Choor Singh J held:-*

"(13) ... and to answer this question, the Court must consider whether or not act or manoeuvre of the accused, viewed objectively, involved danger to other road users in the prevailing circumstances?"

In this case the other road user that is involved is the car ahead of the Defendant or even behind the defendant or on the sides, which gave way to the motorcade.

The distance between Tungku and Jerudong Mini Stadium is approximately 7 km.

I am satisfied that they were traveling at a speed of in excess of 100 km/hr all throughout the journey as I believe to evidence of PW7 who told the court that the speed is between 120 to 130 km/hr. I am satisfied that the defendant was also travelling at the least match the speed of DPPM's. This was admitted by the Defendant in cross-examination.

"Defendant did not remember his speed when he was on the Muara-Kuala Belait Highway and his speed probably would have at least match with the DPMM's speed because if he go faster than him. Defendant would get too close and if he slows down he might be left behind faster"

With this speed and being directly behind at a distance of about one car length as testified by PW7 and this continues for a distance of about few kilometres and went on for a period of more than several minutes, will the 2 second rule apply? DW2 told the Court that the guideline in the UK is reinforced in Brunei through the book that I had stated above."

DW2 informed the Court that since the VVIP was traveling with the prowlers who had cleared the route, why would they be a need for the VVIP to suddenly stop. He also said that for police officers undertaking such a highly skill and specialised role should have a reaction time of at least that or less because they should be anticipating.

There is no evidence to show that the defendant is highly skilled or trained motorcade driver.

DPP : Do you know if the defendant had been trained as a motorcade driver?

DW2 : I don't know.

If any 'untoward' incident to happen in accordance to the guidelines, there is no ample time and space to brake as in accordance to the guideline at a speed of 80 km/hr. the safe distance to follow the car ahead is about 5 cars. Thus, there is a danger to the other road users the VVIP car ahead of him and the escort car behind the Defendant's car.

Looking objectively, I am satisfied that the manner and speed in which the Defendant was driving it is obvious that in driving that way is dangerous to a competent and careful driver and the way he drives falls below the standard of a competent and careful driver."

The magistrate has addressed the Guideline by the Land Transport Department Curriculum in respect of safe stopping distance, which reinforces the U.K. Guidelines relating to the same matter. As it is, the Guidelines recommend keeping a safe distance of 5 cars lengths at 80 km/hr. when following another vehicle from behind and in that instance the appellant had failed to comply with this protocol.

Having considered the appellant being not a highly skilled and trained motorcade driver, driving at such a high speed in the circumstance of the case, tailgating in such a close distance over a distance of 7 km distance to DPMM's car, I believe the magistrate was correct to come to the conclusion that the appellant's driving in the circumstances of the case was dangerous and should untoward were to happen, the appellant would have found insufficient space and time to stop and avoid a collision. I am in no doubt that he has addressed the relevant evidence and correctly applied them in support of the conviction in the charge here. I found no reason to interfere with the conviction.

For the foregoing reasons I dismissed the appellant's appeal against conviction.

Appeal against sentence

As against sentence, the prosecution submitted several cases, which do not seem to be of assistance to the court. Dangerous driving offence is a quasi- criminal summons case per se and not a warrant case. The sentencing principal on criminal matters would not necessarily be particular applicable to the sentencing exercise here.
I note that as far as dangerous driving offences not involving accident is concerned; we appear to be short on authorities or precedents on the matter. However, the magistrate had cited and relied on our cases in deciding on the sentence. Singapore cases appear to be a good benchmark in this case, given the similarity of the provisions. They are as follows;

In *Lim Ye Heng v PP* MA 344/94/01 the offender who drove at a fast speed with two other vehicles and tried to gain the lead and in doing so he weaved in and out of traffic thereby causing vehicles including his own to brake in order to avoid collision. Driving at 90 to 95 km/hr is excess of 50km/hr. limit, the offender was imposed 4 weeks imprisonment sentence and 2 years disqualification by the court of first instant. On appeal,

the imprisonment was set aside and was substituted to a fine of $1,000 in default 4 weeks, while the disqualification remains.

In *Emran bin Salleh v PP* MA 54/95/01 the offender drove his vehicle at a fast speed at 105 to 110 km/hr. weaving in and out without indicating his signal, causing a few vehicles to brake to avoid a collision. He was fine $1,000 in default 2 weeks imprisonment and disqualified from driving for 2 years.

In *Wang Yeou Liang Thomas v PP* MA 143/98/01, the offender claimed trial to speeding at 108 km/hr. exceeding the speed limit of 70 km/hr. failed to conform to traffic red light signal at 3 junctions. He made a sudden illegal U-turn, rode against the traffic, mounted the road kerb and pavement causing pedestrian to jump off to avoid a collision. He had a previous conviction of driving without a licence. He was fined $3,000 and disqualified from holding or obtaining a driving licence for 1 year.

The trend in the above cases appear to be, that in almost all cases of dangerous driving not involving an accident of sort, the court would only imposed a fine and a disqualification. There can be no doubt that the magistrate had passed an appropriate sentence and which was by no means inadequate. He had considered the facts that the appellant is a first offender and most importantly, there was no accident or collision involved. He had given full weight to the circumstances of the offence. Accordingly, I also dismiss this part of the appeal.

In summary, I dismissed both the appellant's appeal against conviction on the dangerous driving charge and the prosecution's cross appeal against the sentence.

Dato Paduka Hairol Arni Majid
Judge, High Court