JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 87/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA vs. YVETTE BACHELOR

Mr. Clarke Cousins for the appellant

Miss Carol Malcolm for the Crown

January 22, 1990

ROWE, P.:

This is a matter in which the appellant, Yvette Bachelor, was convicted before His Honour Mr. A. S. Huntley in the Traffic Court for the Corporate Area on the 6th September, 1989, for driving her motor vehicle without due consideration for other users of the road and he imposed a fine of $250 or twenty days imprisonment for the offence.

The prosecution's case arose in this way: it was a Saturday morning the 6th May, 1989 and at about 9 o'clock a police acting corporal, dressed in uniform, was riding a motor cycle along Knutsford Boulevard in Saint Andrew. He said that as he approached the intersection of Trinidad Terrace and Knutsford Boulevard he observed that there was a vehicle travelling behind him and he also observed that there was a stream of dirty water running out of an over-flowing manhole from right to left across Trinidad Terrace. He said that while he was carefully picking his way through this

water the appellant drove her motor vehicle in an endeavour to overtake his motor cycle in such a way that she splashed him and soiled his uniform, from his shirt all the way down, with this water from the manhole. He caused her to stop and he preferred the charge against her for driving without due care and consideration for other road users.

The defence was that the police officer was riding in a rather carefree, if not careless manner, along Knutsford Boulevard, that the appellant had observed him going from side to side, colloquially "dallying", across the road and then when he approached the intersection of Trinidad Terrace and Knutsford Boulevard he moved more to the right of the road giving her the impression that he intended to turn right along Trinidad Terrace. On that interpretation of the Constable's intention, the appellant said that she pulled to her left as she approached the stream of water, she tooted her horn to let the policeman know that she was on the scene and proceeded to pass him on the left. Then suddenly the Police Officer swerved to the left, causing her to brake suddenly. Her car went into a pot hole and the water therefrom splashed onto and soiled the police officer. She was stopped and prosecuted.

Mr. Cousins submitted that on that evidence the appellant behaved in a reasonable and prudent manner and ought not to have been convicted. He said further that the learned Resident Magistrate's finding of fact that the appellant passed the corporal on the inside of the road was a finding against the weight of the evidence.

In our view, this was a very very simple situation. The appellant had the opportunity to see the police officer riding his motor cycle ahead of her; she had the opportunity to see the water running across the road emanating from a manhole which was malfunctioning; she had the opportunity certainly, to observe that the way the policeman was riding

at that particular time showed that he was in some difficulty as to how to cross over this soiled and dirtied water in his uniform without himself getting splashed. That must have been what was passing through his mind due to the manner in which he was riding and that is what should certainly have been observed by the appellant had she been keeping an intelligent look-out. Instead of allowing the policeman to go through the water unmolested, she could not wait behind, but elected to enter that portion of the road which had the obstruction at a time when the policeman was still at risk and that was, in our view, a lack of consideration for other users of the road and she certainly is criminally responsible for her act in splashing the police officer in that way. The appeal is, therefore, dismissed.