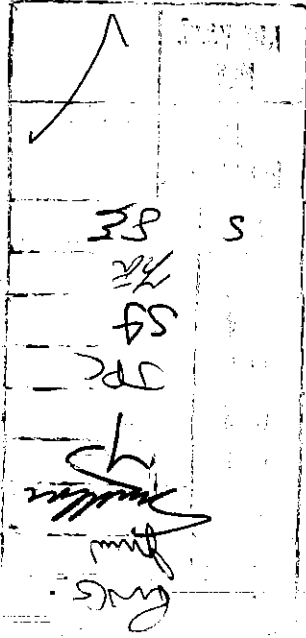


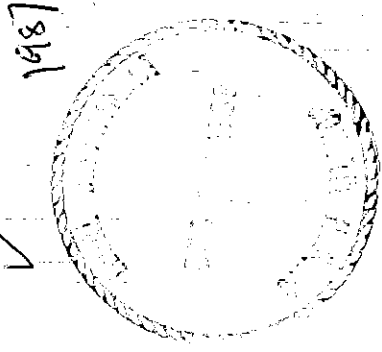


JUDGEMENT

REGINA V. ROGER M. DAVIS

CHARGE: 1242/88

CHARGE: 1243/88



The defendant in this case admitted that at the material time:

- (1) It was his boat which struck the virtual complainant.
- (2) He was the driver of the said boat.
- (3) The boat's speed was then set at half-throttle.
- (4) "The sun's glare was right into our eyes and it was difficult to see"

Among the more important issues of fact left for the Court's determination are:

- (a) Was the defendant's boat at the material time within the 200 yard limit.
- (b) If it was, was the boat then exceeding a speed of 5 knots.

200 YARD LIMIT

On this issue the evidence of Ms. Fournier and her companion Ms. Bednez are at one, and their assertion that the defendant's boat was then within 200 yard limit is buttressed by the witness Mr. Jones. The latter's evidence is unequivocally that, "when I saw the boat travelling North to South I noted that it was travelling within the 200 yard limit"

This contrasts with the defendant's evidence in cross-examination on the point:

"I can't say for certain I was outside the buoys at the time of the incident. They are a long way apart and I was concerned with getting the ladies to shore and was not looking for any buoys"

Witness Jones is the Managing Director of Cayman Water Sports at the Treasure Islands Resort, and was familiar with the 200 yard marker-buoys, their colour and position. His evidence is that he "noted" the position of defendant's boat" at the material time, not that he made an estimation of its position.

I have no doubt that he spoke the truth and reliably so, in confirming the evidence of the two female witnesses. I rejected as speculation that he was influenced by having formed "a sympathetic inclination toward Miss Fournier".

WAS DEFENDANT'S BOAT EXCEEDING 5 KNOTS

On this issue the evidence of witness Jones is to the effect that the defendant's boat at the material time "was travelling at approximately 12 m.p.h.", thus exceeding 5 knots.

This is supported not only by the Test results achieved by Inspector Gilbert McLaughlin under "practically the same weather conditions as depicted in EXH 1A,"

but also by evidence of the two female witnesses, that is to say: as to the considerable effect the wake of the defendant's boat had on each of them, in the sea, at the material time.

The defence demonstrated that Inspector Gilbert McLaughlin's Test results at half-throttle on his own formula, should have been 7.26 rather than 7.8 knots. (The Crown accepted this)

The defence further raised the issue (through its expert witness) of additional weight (undetermined) affecting the speed of the defendant's boat which had not been taken into account at the time of Inspector McLaughlin's Tests.

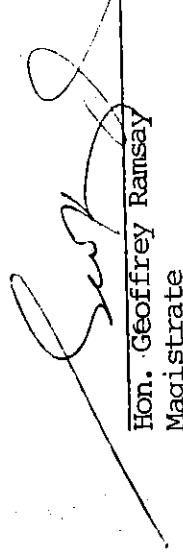
I find that Mr. William Riggs (defence expert) although he struggled to be fair in giving his evidence, was not knowledgeable on all the factors material to determining the speed the defendant's boat was achieving at the material time.

On a review of all the evidence touching this issue, including the premises on which witness Jones based his estimate of speed, I find the Crown's evidence substantially reliable and relied on it.

Inter alia I found the following facts admitted and/or proved:-

- (1) That it was the defendant's boat which struck the virtual complainant.
- (2) That the defendant was the driver of the said boat.
- (3) That the defendant on his return journey home thought he was maintaining a course outside the 200 yard limit up to and at the material time, and was navigating his boat accordingly, although he was not certain of this position.
- (4) That in point of fact, the boat was within the 200 yard at the material time.
- (5) That the speed of the boat was also at that time exceeding 5 knots.
- (6) That the sun's glare was in the defendant's eyes at the time "and it was difficult to see."
- (7) That virtual complainant and her companions were within the 200 yard limit at the material time.
- (8) That although the weather conditions were as depicted in EXH 1A the defendant did not see them in the water before his boat struck Miss.Fournier.
- (9) That the defendant reduced speed only after he "felt a bump on the out-board engine."

In all the circumstances of this case I find the defendant guilty on both charges.



Hon. Geoffrey Ramsay
Magistrate