IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 132

Magistrate's Appeal No 9693 of 2020

Between

Sulaiman bin Mohd Hassan

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Road Traffic Act]
[Criminal Law] — [Statutory offences] — [Motor Vehicles (Third-Party Risks and Compensation) Act]

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v
Public Prosecutor

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General Division of the High Court — Magistrate's Appeal No 9693 of 2020
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19 March 2021

2 June 2021

Tay Yong Kwang JCA:

Introduction

1 The present appeal is against the decision of the District Judge ("the DJ") in *Public Prosecutor v Sulaiman bin Mohd Hassan* [2020] SGMC 46 ("the GD"). The appellant, Sulaiman bin Mohd Hassan, was convicted after trial on two offences related to driving.

2 This case involves the distinction between public service vehicles which are private hire cars and those which are taxis, an issue which has become important given the recent surge in the number of private hire cars. The appellant was alleged to have used a chauffeured private hire vehicle, a Toyota Alphard bearing registration number SDV9333S ("the vehicle"), as a public service vehicle, namely a taxi. The appellant, as the driver of the vehicle, had ferried four female passengers from Marina Bay Sands Hotel ("MBS") to the

Four Seasons Hotel Singapore ("FSH"). He did not pick up the passengers pursuant to a prior private hire request but by virtue of an oral agreement made on the spot while the vehicle was at MBS. The Prosecution contended that the appellant's acts amounted to plying for hire and that he had therefore used the private hire vehicle as a taxi.

3 The Prosecution proceeded with the following two charges:

(a) That you, on 2 February 2018 at about 1.53am, at the Marina Bay Sands Hotel Tower 1 driveway, did use a chauffeured private hire car, namely, [the vehicle], as a public service vehicle, namely, a taxi, otherwise than in accordance with the licence issued under Part V of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") for the vehicle, to wit, there was only a valid licence authorising the use of the vehicle as a chauffeured private hire car and not as a taxi, in contravention of s 101(1) of the RTA, an offence punishable under s 101(2) of the RTA ("the RTA charge").

(b) That you, on 2 February 2018 at about 1.53am, did use a motor vehicle in Singapore, namely, [the vehicle], to wit, you used the vehicle as a taxi, by carrying passengers from the Marina Bay Sands Hotel Tower 1 driveway to the Four Seasons Hotel Singapore, whilst there was not in force in relation to the said use of the vehicle such a policy of insurance in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("MVA"), and you have thereby contravened s 3(1)(a) of the MVA, which contravention is punishable under s 3(2) read with s 3(3) of the MVA ("the MVA charge").

For the RTA charge, the appellant was fined $1,000, in default, four days' imprisonment. In respect of the MVA charge, he was fined $700, in default, three days' imprisonment. In addition, for the MVA charge, he was disqualified from holding or obtaining all classes of driving licences for 12 months ("the DQ Order"). The DQ Order was stayed pending his appeal here.

4 The appellant appealed against his conviction and sentence (including the DQ Order) in respect of both charges. I heard the appeal on 19 March 2021 and dismissed it after giving brief oral grounds. I now set out the detailed reasons for my decision.

The facts

5 The pertinent facts are set out in the Agreed Statement of Facts ("ASOF"). I reproduce below the relevant portions and, where necessary, I will also refer to the appellant's evidence at the trial.

Background

6 At the material time, the appellant had hired the vehicle from Section Limousine Services Pte Ltd ("Section Limousine"). Section Limousine was the registered owner of the vehicle and was issued a licence under Part V of the RTA, which permitted the use of the vehicle as a chauffeured private hire car. The vehicle did not have a licence for use as a taxi.

Events of 2 February 2018

7 The complainant who brought the offences to light, quite by chance, was Ms Gabrielova Petra ("Ms Petra"). She was one of the appellant's four passengers on 2 February 2018. That day, at about 1.53am, Ms Petra and her three friends were walking along the driveway at MBS Tower 1 towards the taxi

stand. They approached the appellant, who was in the stationary vehicle at the waiting/pick-up area. Ms Petra and the appellant had a brief discussion during which they agreed that the appellant would drive Ms Petra and her friends from MBS to FSH. Ms Petra and her friends then boarded the vehicle and the appellant drove them to FSH.

8 Upon arrival at FSH, Ms Petra paid some money to the appellant as the fare for the ride. The appellant did not issue a receipt. The trip was not booked through the Grab application and there was no prior agreement before Ms Petra met the appellant at the MBS waiting/pick-up area.

9 Later, Ms Petra discovered that she had left her designer jacket in the vehicle. She contacted MBS, FSH and Grab, hoping to retrieve her jacket. On Grab's advice, Ms Petra lodged a police report and FSH reported the matter to the Land Transport Authority ("LTA") on her behalf.

10 During cross-examination, the appellant accepted that he knew that private hire cars were not supposed to pick up passengers from hotels without a private hire car booking (*eg*, Uber or Grab). This was consistent with his statement given to the LTA on 1 March 2018 where he claimed that when the four passengers approached the vehicle and boarded it, he told them he "could not take them as I did not have their booking". He also testified that he had been doing this line of work for about six years and "I never do any side orders, that means, uh, on the side of the road pick up people and do some touting" (the GD at [37]).

Insurance coverage

11 A contract of insurance had been entered into between Section Limousine and Tokio Marine Insurance Singapore Ltd ("Tokio Marine") in

respect of the vehicle ("the Insurance Policy"). The Insurance Policy contained an endorsement that states that "Rental for use as taxi service is not covered by the policy" ("Endorsement B").

The DJ's decision

12 In the course of the discussions that follow, I refer to counsel for the appellant as the "Defence" since the appellant was represented by Defence Counsel at the trial.

The RTA charge

13 The key issue before the DJ was whether the appellant was "plying for hire" when he was waiting at the MBS waiting/pick-up area on 2 February 2018 and when he subsequently picked up the four passengers who approached the vehicle. Both the Prosecution and the Defence proceeded on the basis that this was the central issue because of the distinction between private hire cars and taxis contained in the Second Schedule to the RTA (referred to subsequently in this judgment).

14 There was no dispute that the appellant had conveyed the four passengers in the vehicle from MBS to FSH in the early hours of 2 February 2018 without a prior booking for a limousine service. The appellant had agreed on the spot to convey the four passengers from MBS to FSH. Ms Petra testified that they had agreed on the price of $50 before the trip and that she paid the appellant $50 and gave him a $10 tip at the destination. At the trial, the appellant claimed that when he told Ms Petra that she had to make a booking through Grab or Uber, the four passengers persisted and boarded the vehicle. The appellant also claimed that they did not discuss the fare as the passengers were drunk and were quarrelling with one another during the trip to FSH. However,

they gave the appellant $15 at the end of the trip. In his statement given to the LTA on 1 March 2018, he stated that the front passenger gave him $16 "as a token" at the end of the trip. At [44]–[46] of the GD, the DJ accepted the Prosecution's evidence that the appellant had agreed on a fare of $50 for the trip.

15 At [26] of the GD, the DJ pointed out that what was relevant in the case before him was the distinction drawn between private hire cars and taxis in the Second Schedule of the RTA. The distinction was that private hire cars are motor cars that do not ply for hire on any road while taxis are motor cars which ply for hire on any road. Both the Prosecution and the Defence relied on several English cases for the meaning of the phrase "ply for hire" appearing in the Second Schedule of the RTA as there was no legal definition for that phrase in the RTA.

16 In the DJ's view, the phrase "ply for hire" would imply ordinarily that the appellant was driving the vehicle on the roads looking for customers or passengers. The DJ stated that the phrase must be seen in the light of the demarcation of private hire cars and taxis in Singapore and what the drivers of each type of public service vehicle can and cannot do to take in passengers.

17 The DJ accepted the Prosecution's submissions that the vehicle driven by the appellant was parked prominently in the waiting/pick-up area of MBS, in full view of members of the public. It was reasonable to imply by the location where the appellant was waiting with the vehicle that members of the public would form the impression that the vehicle was for hire, as Ms Petra did. More specifically, it led to Ms Petra approaching the appellant in the vehicle and asking him to drive her and her friends to FSH. Significantly, the appellant did not disabuse Ms Petra of her impression that the vehicle was for hire. Instead,

he entered into an agreement with her on the spot for him to convey Ms Petra and her friends to FSH for a fare of $50.

18 The DJ found an observation made by the court in *Reading Borough Council v Ali* [2019] 1 WLR 2635 ("*Reading Borough Council*") at [38] instructive. One of the reasons given for the acquittal in that case was that if a member of the public had approached the vehicle and sought a ride, the defendant would have refused to take such a passenger off the street without a prior booking through the Uber app. On the facts of the present case, as pointed out above, the appellant did not refuse to take the passengers but instead confirmed Ms Petra's impression that the vehicle was for hire by agreeing to ferry them to their destination for the agreed fare of $50.

19 Based on the foregoing, the DJ found that the Prosecution had proved its case beyond a reasonable doubt. The appellant, by waiting at the pick-up area of MBS, and agreeing to convey and subsequently conveying the four passengers to FSH for $50 without a prior booking, had used the vehicle as a taxi in contravention of the public service licence issued for the vehicle to be used as a chauffeured private hire car.

The MVA charge

20 The Prosecution argued that the use of the vehicle as a taxi was excluded from the scope of the Insurance Policy, specifically in Endorsement B. Therefore, when the appellant used the vehicle as a taxi on 2 February 2018, there was no insurance coverage for the vehicle in respect of third-party risks. The DJ accepted the Prosecution's submissions on the MVA charge in their entirety and did not accept the arguments of the Defence that even if the vehicle was used as a taxi, it was still covered by the Insurance Policy.

Sentencing

21 The Prosecution did not submit for a custodial sentence and suggested fines of $1,100 for the RTA charge and of $700 for the MVA charge. This represented a "slight uplift" for the usual fines for uncontested cases. The Defence sought a fine of not more than $500 for the RTA charge and $300 for the MVA charge. It submitted that "the [appellant] had cooperated with the authorities and understood that he had transgressed the law" and that he was deeply remorseful and would not "repeat such a mistake in the future".

22 The DJ decided that a non-custodial sentence was sufficient for the appellant who was a first offender. He imposed the following sentences:

(a) On the RTA charge, the DJ imposed a fine of $1,000, stating that this would be in line with sentencing precedents and might even be on the lenient side since the appellant had contested the charge.

(b) On the MVA charge, a fine of $700 was imposed. The appellant had not only claimed trial to this charge but had made unmeritorious arguments on this charge during the trial. The DJ decided against a higher fine as the appellant was a first offender, had health issues and was the sole breadwinner in his family. However, he did not accept the appellant's claim about being remorseful as the appellant had shown himself to be untruthful during the trial in his bid to avoid the legal consequences of his wrongful act.

In addition, pursuant to s 3(3) of the MVA, the DJ imposed the mandatory disqualification from driving for 12 months. There were no "special reasons" that warranted non-imposition of the disqualification: see *Muhammad Faizal bin Rahim v Public Prosecutor* [2012] 1 SLR 116 and *Prathib s/o M Balan v*

Public Prosecutor [2018] 3 SLR 1066. The DJ rejected the Defence's contention that the fact that it was Ms Petra who approached the vehicle seeking a ride amounted to a special reason not to impose a disqualification order.

The parties' cases on appeal

23 The parties' cases on appeal reprised essentially their arguments at the trial.

The appellant's case

The RTA charge

24 The appellant argued that a two-stage test should apply in determining whether a vehicle had plied for hire, following the English decision in *Reading Borough Council*:

(a) First, that the vehicle was exhibited to intended passengers or was on view to the public.

(b) Second, the driver or the vehicle should expressly or impliedly solicit customers in the sense of inviting the public to use the vehicle for hire.

25 At the first stage, the relevant factors to consider would be:

(a) the location of the vehicle at the material time (whether it was in a public street as opposed to a more secluded spot) and its visibility to the public;

(b) the appearance of the vehicle and whether it had particularly

distinctive markings suggesting that it may be hired;

(c) the appearance of the drivers, whether they looked like private chauffeurs; and

(d) whether it would give the appearance of being cars which were available for hire to an ordinary member of the public.

26 At the second stage, the relevant considerations would be:

(a) whether there are particularly distinctive signs, phone numbers, *etc*, on the face of the vehicle;

(b) whether any fact in the appearance or behaviour of the vehicle makes a present open offer to the public to hire the vehicle; and

(c) that by itself, waiting is an ambiguous factor as it relies on the context and the nature of the waiting.

27 In this case, the appellant's vehicle was not waiting in a queue with taxis and had not displayed any signs on his vehicle to signal that it was a taxi. It was Ms Petra who approached the vehicle. The pick-up area that the vehicle was waiting at was not one designed specifically for taxis only.

28 The DJ placed excessive weight on the Prosecution's submissions that the vehicle was parked prominently in the waiting/pick-up area of MBS in full view of members of the public and that led to Ms Petra approaching the vehicle. The DJ also placed weight wrongly on the fact that the appellant, instead of refusing to ferry Ms Petra, entered into an agreement on the spot to convey her and her friends to their intended destination for a fare. These led the DJ to the conclusion that the vehicle was plying for hire. On the other hand, the DJ placed

insufficient weight on the fact that it was Ms Petra who had approached the vehicle actively and that the appellant's act of waiting was insufficient to amount to an invitation to potential passengers that the vehicle was for hire.

29 The DJ also erred in law and in fact in the following areas:

(a) The DJ erred in finding that there was no prior booking between the appellant and Ms Petra. The agreement reached on the spot between formed at MBS operated as a prior booking. The absence of a prior booking was not material anyway in evaluating whether the vehicle was operating as a taxi or as a private hire car. The relevant query was whether the vehicle was plying for hire.

(b) The DJ placed excessive weight on the appellant's *mens rea*. The RTA charge was one of strict liability and a mental element was not required for the offence to be made out. Further, while the appellant knew he was not supposed to pick up passengers on the side of the road or tout for passengers, his knowledge "did not extend to a situation where the passenger walks up to him while he was waiting in the pick-up area / drop-off point".

The MVA charge

30 On the MVA charge, the thrust of the Defence's case was that, on its true construction, the Insurance Policy covered the use of the vehicle at the material time. Endorsement B of the Insurance Policy was not incorporated into the contract between the appellant and Section Limousine. Clause 5 of that contract, which the Prosecution relied on, did not involve the insurer, Tokio Marine. In any event, the DJ also gave insufficient weight to the fact that the

appellant was not made aware of the prohibition in Endorsement B of the Insurance Policy.

31 Further, in the certificate of insurance, s 95 of the Malaysian Road Transport Act 1987 ("the Malaysian RTA"), referred to later in this judgment, was incorporated expressly. This provision meant that "the Policy must be construed to be in effect even when the motor vehicle is being used for a purpose different from that which is stated in the Policy".

32 Finally, the Insurance Policy remained in force at the material time and would have covered the four passengers in the vehicle. Section 9(1) of the MVA has the effect of ensuring that Tokio Marine would have been liable for third-party risks. The mischief which s 3(1) of the MVA was meant to prevent, namely, that passengers are left uninsured, was therefore not present on the facts here because s 9(1) of the MVA would render Tokio Marine liable to satisfy judgments in favour of third parties.

33 The Defence did not submit on the issue of sentence in its written submissions. However, at the hearing, it clarified that the appeal against sentence was limited to the DQ Order imposed on the appellant.

The Prosecution's case

The RTA charge

34 The Prosecution submitted that the question of whether a vehicle was "plying for hire" was ultimately one of fact that "has to be decided by the application to a great extent of the rules of common sense": *Gilbert v McKay* [1946] 1 All ER 458. The series of English cases culminating in *Reading Borough Council* showed that the test for "plying for hire" turned on two

factors: (a) the vehicle must be exhibited or on view; and (b) while so exhibited, it was expressly or by implication soliciting custom in the sense of inviting the public to use the vehicle without a prior contract. This test was not to be applied in a mechanistic manner and a holistic consideration of all the facts was required.

35 In the present case:

(a) The vehicle was clearly on view or exhibited as it was parked in a public place and visible to members of the public.

(b) There was both an implied and express invitation to the public to use the vehicle.

(i) There was an implied invitation as the vehicle was parked prominently in the waiting/pick-up area outside MBS where passengers were routinely picked up and dropped off and which was near a taxi stand. The invitation was picked up by Ms Petra who thought that the vehicle was a "hotel taxi" and therefore available for hire. She then approached the appellant for the trip to FSH.

(ii) There was also an express invitation to use the vehicle. Prior to the passengers boarding the vehicle, Ms Petra and the appellant had a discussion about the destination and the price for the ride and, obviously, the appellant indicated that he was willing and available to convey the passengers. Even if the appellant did nothing to invite members of the public to ride in his vehicle before Ms Petra approached him for a discussion, the fact remained that at no point after Ms Petra approached the appellant did he disabuse her of the notion that the vehicle was available for hire.

(c) The vehicle was available for hire immediately and it was hired when the appellant conveyed Ms Petra and her friends to FSH immediately after they had agreed on the destination and the fare.

36 Based on the foregoing arguments, the DJ was correct to find that the appellant was plying for hire at MBS. Accordingly, the appellant contravened the vehicle's licence and his conviction on the RTA charge was correct. The appellant's argument that the oral agreement between him and Ms Petra constituted a "prior booking" was entirely misconceived and would lead to absurd outcomes. By the appellant's definition, all private hire cars would be permitted to ply for hire on the roads, since all private hire car drivers who pick up street-hail passengers would agree with their passengers on the destination and fare before starting the journey.

The MVA charge

37 The Prosecution submitted that the DJ was correct to find that the vehicle was used as a taxi and that the Insurance Policy did not cover the use of the vehicle as a taxi. Endorsement B of the Insurance Policy did not allow the vehicle to be used to provide taxi services. The Prosecution also referred to case law which showed that s 3(1) of the MVA required the policy in question to cover specific uses of the vehicle: see *Public Prosecutor v Teo Rong Zhi Saimonn* [2013] 4 SLR 962 ("*Saimonn*") and *Lim Cheng Wai v Public Prosecutor* [1988] SGHC 68.

38 The appellant's contention that the Insurance Policy was still in force at the material time as the insurer was not entitled to terminate it was a red herring. This argument obfuscated the true issue which was whether the Insurance Policy covered the use of the vehicle in the first place.

39 While the appellant contended that Tokio Marine would have been compelled by law to compensate any third-party victims, this was irrelevant to the MVA charge. In *Saimonn*, the court made two key holdings in respect of s 9 of the MVA. First, s 9(1) of the MVA, which states that an insurer shall remain liable notwithstanding that it "may be entitled to avoid or cancel or may have avoided or cancelled the policy", did not apply where a policy did not cover a certain mode of use of the vehicle in the first place. Second, and more fundamentally, even if s 9(1) MVA applied to provide insurance cover to an injured third-party, the criminal liability of the user of the vehicle under s 3(1) MVA was unaffected.

40 Finally, the appellant's contention on his lack of awareness of the prohibition in Endorsement B was a complete non-starter since s 3(1) of the MVA involved a strict liability offence. There was no requirement for the Prosecution to prove that the appellant knew that the specific use to which he put the vehicle was not covered by insurance.

Sentence

41 The Prosecution submitted that the sentences imposed by the DJ were not manifestly excessive and were in line with precedents. There was also no special reason against the imposition of the DQ Order of 12 months. The appellant's appeal should therefore be dismissed in its entirety.

My decision

42 I address the issues that arise in this appeal in the following order:

(a) what is the meaning of "ply for hire" in the Second Schedule to the RTA;

(b) whether, based on the correct interpretation of "ply for hire", the appellant's conviction under the RTA charge can stand;

(c) whether the appellant's conviction under the MVA charge can stand; and

(d) whether the appellant's sentence, in so far as the DQ Order was concerned, should be adjusted in any way.

The statutory provisions

43 I set out below the statutory provisions which apply in this case. The provisions under the RTA are as follows:

> **Prohibition of use of unlicensed public service vehicles**
>
> **101.**—(1) Subject to the provisions of this Part, no person shall use a motor vehicle, or cause or permit a motor vehicle to be used, as a public service vehicle unless there is in force, in respect of the vehicle, a valid licence issued under this Part authorising such use, or otherwise than in accordance with the licence and any conditions attached thereto.
>
> (1A) …
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $3,000 or to imprisonment for a term not exceeding 6 months or to both.

The appellant was charged in 2018 under the pre-amendment version of the RTA, as set out above. Amendments were introduced to s 101 of the RTA in 2020 which resulted in a change in its wording to refer to a list of "proscribed vehicles" as defined in s 101(10) of the post-amendment version of the RTA.

44 The relevant parts of the Second Schedule to the RTA provide:

> 1. The classification and descriptions of public service vehicles for the purpose of this Act and the rules shall be as follows:
>
> | *First Column*
Class of Public Service Vehicles | *Second Column*
Description |
> |---|---|
> | … | |
> | (*e*) Private hire cars
… | Motor cars that do not ply for hire on any road but are hired, or made available for hire, under a contract (express or implied) for use as a whole –
(i) with a driver for the purpose of conveying one or more passengers in that car; or
(ii) by a hirer, or any other person authorised by the hirer in the contract, to drive the motor car personally. |
> | (*g*) Taxis | Motor cars having a seating capacity for not more than 8 persons (including the driver), which ply for hire on any road and are hired under a contract, express or implied, for the use of each such vehicle as a whole or for the use of 2 or more persons who pay separate fares. |

45 The relevant MVA provisions are as follows:

> **Users of motor vehicles to be insured against third-party risks**
>
> **3.**—(1) Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use —
>
> (*a*) a motor vehicle in Singapore; or
>
> (*b*) a motor vehicle which is registered in Singapore in any territory specified in the Schedule,
>
> unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.
>
> (2) If a person acts in contravention of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 3 months or to both.
>
> (3) A person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence under the Road Traffic Act (Cap. 276) for a period of 12 months from the date of the conviction.

The DJ's factual findings

46 The DJ's key factual findings are set out at [27]–[42] of the GD. In my view, the findings are correct. The appellant did pick up the passengers on 2 February 2018 and conveyed them in the vehicle from MBS to FSH for a fare. The vehicle was not permitted to be used as a taxi. The contract between the appellant and Section Limousine stated at clause 5:

> 5. The Chauffeur shall be engaged exclusively to provide his services to drive the Vehicle as a private limousine and shall not use the Vehicle for any unlawful purposes and to engage in any taxi services. …

47 For the MVA charge, the existence of the Insurance Policy and its terms were not in dispute. The sole contention was in relation to its interpretation.

My decision on the RTA charge

48 As noted earlier, the pivotal issue for the RTA charge was the meaning of "ply for hire" in the Second Schedule of the RTA. If the appellant was plying for hire, that would take the vehicle out of the definition of a private hire car in the said Second Schedule. Instead, he would have used the vehicle as a taxi. Under s 101 of the RTA, the appellant would need to have the requisite licence for a taxi at the material time and it was not disputed that he did not have such a licence.

The meaning of "ply for hire" in case law

49 The RTA does not define the words "ply for hire". However, the English cases cited by the parties provide a good working definition. I discuss four of the relevant cases.

50 In *Cogley v Sherwood* [1959] 2 QB 311 ("*Cogley*"), a car-hire company operated a fleet of motor cars (that could be self-driven or chauffeured) at the North and Central terminals of London airport, under contract with the Ministry of Transport and Civil Aviation. The company's cars were not licensed as hackney carriages. There was no indication at the locations where the cars waited that they were for hire. The locations were also not accessible to the public. Instead, bookings had to be made at the booking desks situated at each terminal and the passengers would then be escorted to one of the cars by an employee of the company. The company's booking desks were positioned in a manner that was plainly visible to arriving passengers and the services available were well-advertised through notices at the booking desks and in the terminals.

51 The two respondents, who were taxi-drivers, with the object of obtaining evidence against the appellants, approached the booking desks separately and

arranged for two of the company's cars to be hired for short journeys from the airport. The respondents were each asked for, and paid, to the driver a fare representing three shillings per mile for the journeys. Subsequently, the respondents brought proceedings against the drivers and the company, alleging that the cars had acted as taxis although they were not licensed as hackney carriages. The appellants were convicted. A case was then stated to the Queen's Bench Division.

52 Lord Parker CJ considered that the essence of "plying for hire" (*Cogley* at 325–326) was that the vehicle in question should be on view, the owner or driver should expressly or impliedly invite the public to use it and the member of the public should be able to use that vehicle if he wanted to. He stated that the essence of plying for hire was that the carriage should be exhibited (*Cogley* at 326). The other two judges concurred with these views (see *Cogley* at 329 and 331). On the facts, the court allowed the appeals and acquitted the appellants. The court observed that the only cars that were on view were at one terminal and, to any ordinary member of the public, they did not appear to be for hire but appeared merely to be ordinary private cars with private chauffeurs (at 326).

53 In *Rose v Welbeck Motors Ltd* [1962] 2 All ER 801 ("*Rose*"), a minicab, which carried the inscription "Welbeck Motors, Minicabs" and a telephone number along the roof, was parked at a bus stand-by near the junction of two roads. A taxi driver asked the driver of the minicab to move away and when the driver refused, the taxi driver called the police. Later, when a bus wanted to pull into the bus stand-by, the driver of the minicab drove his minicab some ten yards further along the road. When two police officers arrived at the scene, the driver of the minicab told them he had been waiting there for 50 minutes for jobs that might come up in the area and of which he would be informed over radio

communication. When the police officers told him to leave, he drove the minicab away but returned later to park near its original parking area.

54 The owners and the driver of the minicab were charged with committing an offence in that their unlicensed hackney carriage was plying for hire. At the end of the evidence by the taxi driver, the owners and the driver of the minicab submitted that there was no case to answer because there was no evidence of solicitation or invitation to the public and there was nothing stating that the minicab was for hire. Further, there was no evidence that the minicab was exhibited with an open offer to the public to use it and the driver was just sitting and waiting for directions by radio. Their submission was upheld and the case against them was dismissed. The taxi driver appealed.

55 Lord Parker CJ, again delivering the lead judgment, referred to the observations in *Cogley* and found as follows (at 804):

> Again, in *Cogley's* case this court held that it was essential before one could say that a vehicle was plying for hire, first that it should be exhibited or be on view to the public, and secondly, that it should while on view expressly or impliedly solicit custom in the sense of inviting the public to use it. The fact that if those conditions were proved a ticket had to be obtained from an office or a booking made other than through the driver was immaterial. …

56 It was held that the first question of exhibition was "undoubted" on the facts. As for the second question of soliciting custom, Lord Parker CJ found it relevant that the vehicle was of a distinctive appearance, regarding its colour, its inscriptions, its equipment in the form of radio communication and its type. The vehicle was also standing with the driver at the steering wheel for some 50 minutes in a public place on public view, where many members of the public would be getting off or gathering to board the buses. Moreover, when the driver was asked to leave, he drove away only to return immediately almost to the

same place. He held that there was a case to answer and that the case should be remitted to the trial court.

57 The other two judges agreed. Winn J added (at 805):

> … It seems to me that the essence of this case is what interpretation must be put upon the appearance and the behaviour of the vehicle in the circumstances established *prima facie* by the evidence. … it makes no difference in law whether the vehicle was to be taken to be saying: 'I am here available for you to step into and hire me as a cab', or whether it must be taken to be saying: 'I am here available to be hired by you conditional upon my owner's approval and his ordering me to take you where you want to go'. … At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounted to an invitation, 'Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring'.

58 In *Nottingham City Council v Woodings* [1994] RTR 72 ("*Woodings*"), the defendant was the driver of a minicab which was licensed as a private hire vehicle but not as a hackney carriage. The vehicle in question was recognisable as a minicab by the signs on its side. The defendant parked his vehicle in a city centre while he visited the adjacent toilets. When the defendant returned to his vehicle, he was approached by two plain clothes officers who asked whether he was free. When the defendant replied that he was, one of the officers asked him if he could ferry them to a certain destination and how much it would cost. In response, the defendant said, "Depends on where you are going". The officers then entered the vehicle and disclosed their identities. The defendant was convicted subsequently of plying for hire with the vehicle without a licence under the relevant statute. On appeal, the Crown Court held although the defendant had been prepared to accept the officers as a fare, he had merely been taking advantage of the opportunity and was not plying for hire within the meaning of the statute.

59 On appeal by the prosecution, the court reversed the acquittal. The question for the opinion of the court was whether the driver of a marked minicab whose vehicle was not a licensed hackney carriage was plying for hire within the meaning of the statute if he, without more, was approached by a member of the public and then entered into and/or concluded negotiations for the hire of the vehicle. After reviewing various precedents, including *Cogley* and *Rose,* Rose LJ, with whom the other Judge agreed, stated as follows (*Woodings* at 78):

> In my judgment, when the defendant parked the marked car in the street, for the purpose of going into the toilet, he was not plying for hire, and when he came out of the toilet, he was not plying for hire. But when, having sat in the driver's seat, he told the prospective passengers that he was free to carry them, at that stage he was, bearing in mind where the car was and what the car looked like, plying for hire.

60 Although Rose LJ accepted that exhibition was not a necessary ingredient for the offence charged in *Woodings*, which was under a different statute from the offences involved in *Cogley* and *Rose*, the Judge added:

> … Clearly, if a car is exhibited as a taxi and the driver is sitting in it, those are highly material circumstances when one comes to consider the question of whether he is plying for hire with a carriage. But it does not seem to me that it is a necessary ingredient in this offence that the vehicle should be exhibited in the way which was a necessary requirement in [*Cogley*] and [*Rose*]. … Accordingly, it follows that, for my part, I would allow the prosecutor's appeal and answer the question posed in the affirmative.

61 The decision of the English High Court in *Reading Borough Council* was cited by both the appellant and the Prosecution. *Reading Borough Council* involved the usage of taxi-hire applications (or apps) that have become ubiquitous here. In that case, Uber London Ltd ("Uber London") held a licence for the operation of private hire vehicles. It also utilised a smartphone app that allowed users to view a list of available vehicle types in the area, request the provision of a vehicle by entering a destination and make a booking according

to the fare estimate. If a nearby driver accepted the request, Uber London would confirm the booking, allocate the driver and provide the driver and the passenger with each other's details through the app. The drivers of Uber London were allowed to operate their private hire businesses but were not permitted to ply for hire, which only licensed hackney carriages were permitted to do. The defendant was a driver for Uber London. In the early hours of the day in question, he parked his vehicle in a street waiting for a passenger to make a booking for his vehicle through the app. Two licensing enforcement officers identified the defendant's vehicle using the appellant, approached the vehicle and interviewed him. The defendant stated that he was waiting for a booking through the Uber London app. The following night, the same officers came across the defendant and interviewed him again.

62 At first instance, the Chief Magistrate dismissed the case, holding that the defendant was parked lawfully and that he was not waiting in a taxi stand or near a bus stop. The vehicle also did not have markings indicating that it was for hire although it had two small roundels on the back window and on the front windscreen indicating that it was licensed as a private hire vehicle. The vehicle was not available to anyone hailing it on the street but could only be hired through the Uber London app.

63 On appeal, the English High Court affirmed the decision of the Chief Magistrate. The court held that there was no unlawful plying for hire because the mere depiction of the defendant's vehicle on the Uber London app did not fulfil the requirement of exhibition of the vehicle in the sense in which that phrase was used in *Cogley* and *Rose*, which required not just exhibition but exhibition expressly or implicitly soliciting custom, inviting members of the public to hire the vehicle. The character of the waiting also showed that the defendant was not plying for hire. He was waiting in his vehicle until a customer

confirmed a booking on the Uber London app and he accepted that booking. There was no question of his soliciting custom during the wait. The vehicle did not advertise itself as available for hire nor did the defendant do anything which would have suggested to the public that he was available for hire. The facts showed that if a member of the public had approached the vehicle and sought a ride, the defendant would have refused to take such a passenger off the street without a prior booking through the Uber London app.

The test to be applied

64 In my opinion, the test of when a vehicle is plying for hire enunciated in *Cogley* is really an application of common sense to a particular set of facts. The inquiry has to be fact-sensitive because there can be many variations as to how a driver sources for passengers, particularly in the context of modern-day technology. While the notion of private hire cars existed then (*Cogley* was decided in 1959), online ride hailing apps have become the norm today. Technological advances will become an increasingly important factor in the determination of when a vehicle is plying for hire. Similarly, human ingenuity in circumventing regulatory controls will always have a part in the equation.

65 Generally, when a vehicle on the road is on view to members of the public and there are indications that it is available for hire to anyone who is willing to pay a fare, then logically it can be said that the vehicle is plying for hire on the road. A vehicle moving along the roads looking for fares and stopping whenever it is hailed would clearly be plying for hire. However, the vehicle does not need to be on the move. It can be parked at the roadside or even in a carpark lot. The indications that it is available for hire may be express or implied. Express indications could be markings or notices on the vehicle or near it (where the vehicle is stationary) stating that the vehicle is for hire, for instance,

by the display of "For Hire" signs. Implied indications could be the fact that the vehicle is waiting at a taxi stand or a drop-off and pick-up point for passengers.

66 There may also be situations where the vehicle is not within sight of members of the public (because it is parked at another location nearby) but the driver is away from the vehicle asking potential passengers whether they need transport and when they say they do, the driver then brings them to the vehicle or drives the vehicle to meet them. In all these situations, it would be fair and logical to say that the vehicle was in truth plying for hire.

67 On the facts of this case, another useful consideration is to enquire whether there was a booking made before the trip, whether through a ride hailing app or equivalent booking platform. If such a prior booking existed before the driver had any interaction with the prospective passenger, the vehicle would not be said to be plying for hire.

68 In the absence of a prior booking before the trip, the question that arises is how the driver came to offer his/her transport service to the prospective passenger. An agreement between the driver and the passenger:

(a) may be arrived at expressly through conversation or impliedly by conduct such as the passenger boarding the vehicle and the driver then driving the vehicle away. An express or implied agreement is envisaged in the definitions of "Private hire cars" and "Taxis" in the Second Schedule of the RTA; and

(b) must involve the expectation of or the giving of consideration by the passenger's payment of money or its equivalent in exchange for being ferried. This is implied by the words "for hire" in the Second Schedule of the RTA. Otherwise, the ride would be a gratuitous one and

> the driver would not have plied "for hire". The fact that a passenger fails or refuses to pay the fare at the end of the trip is immaterial if all the other factors point to the vehicle plying for hire.

69 If an express or an implied agreement is proved to have taken place, obviously the vehicle has plied for hire. All the more so if the trip has been made and the passenger has paid the driver the agreed fare, However, the situation may be that the vehicle is stationary and no passenger has approached it or has been approached by the driver yet. In such a case, the enquiry turns to the purpose of the vehicle being stationary at that location and whether there are any indications that the vehicle is available for hire to anyone who requires it.

70 Again, the enquiry will be a fact-specific one. If the vehicle was waiting at a location where taxis or other public service vehicles usually pick up or drop off passengers, that would point to the vehicle being there for the purpose of picking up passengers at random. An agreement would not have been made then but the material consideration is that the driver is willing to make the agreement, express or implied, to ferry anyone needing transport and willing to pay the fare.

71 A driver accused of waiting for potential passengers and therefore plying for hire may be able to show the contrary in a number of ways. He could prove that he was actually at that stop waiting to pick up his family or his friend and that there would be no payment at all. Similarly, if the driver can show that he stopped at that location merely for a toilet break or to buy something, then clearly, he was not exhibiting his vehicle with a view to picking up passengers for fares. In weighing the truth in such matters, one would have to consider factors such as the particular location that the vehicle was at and the length of time taken for the professed purpose.

72 If a driver is waiting inside or near his vehicle or returning to it and a passenger comes up to him and asks whether the vehicle is available for a trip, a driver who is not plying for hire would obviously inform the passenger that his vehicle is not for hire or perhaps even inform the passenger about the proper way of booking the vehicle for a trip if the vehicle is a private hire car. Similarly, if a passenger opens the vehicle's door and gets into the vehicle without invitation, such a driver would tell the passenger that his vehicle is not for hire. If the driver does not do so and instead starts driving and asks the passenger for the destination, then the answer is equally obvious. In such a situation, the vehicle would be plying for hire even if the driver's original intention of stopping his vehicle was not to ply for hire. An intention to ply for hire can be made on the spot.

73 The reasons why the RTA draws a distinction between taxis and private hire cars were mentioned in Parliamentary debates cited by the Prosecution (see *Parliamentary Debates Singapore: Official Report* (11 July 2016) vol 94 (Ng Chee Meng, Senior Minister for Transport)). The Minister explained that the distinction is rooted primarily in the fact that taxis undergo more frequent inspections, clock much greater average mileage and taxi drivers undergo more rigorous training. These factors warrant a strict delineation between the types of services that taxis and private hire cars may provide.

Whether the appellant plied for hire

74 The evidence at the trial shows that the appellant was fully aware of the different operating modes for private hire cars and taxis. In his statement to the LTA dated 1 March 2018, he stated that after he had alighted a passenger at MBS, the four females approached and opened the door of the vehicle and boarded it. The female passenger who sat in front asked to be conveyed to a

nearby location and told him "to just drive". He told her that they must book through Uber or Grab but they insisted that "I go and said 'just go'". During the trip, he did not talk to the passengers as they were quarrelling among themselves. They alighted at FSH and he then drove home. The appellant also stated that "[w]hen [the passengers] approached my vehicle and boarded it, I told them that I could not take them as I did not have their booking. They said it was no problem and asked that I send them as the destination was near. So I drove them". The appellant alleged in the statement that he never did any touting and considered that he was merely "providing a helping to send them to the hotel because they were drunk". He claimed that he did not ask for any fare but they paid him "a token of $16".

75 The DJ rejected the appellant's reasons for driving the four passengers to FSH. The appellant's statement to the LTA contradicted materially his testimony at the trial where he testified, among other things, that he had agreed on the price and the destination with Ms Petra before he conveyed the passengers to FSH. There was therefore an express agreement for the hire.

76 The appellant explained in his statement to the LTA that he had to drive the vehicle away from MBS because there were many vehicles behind his sounding their horns. That was shown to be false by the CCTV footage.

77 The appellant testified that on 2 February 2018, he had received an Uber booking and therefore drove to MBS. After waiting at the pick-up area for ten to 15 minutes, the booking was cancelled. He decided to wait for a few minutes more to see if there might be another booking and that was when the four females approached the vehicle. Even if what the appellant had said about the conduct of the four females was true, he could have refused to drive because he had a good legal reason to decline the trip. He knew that he was not allowed to

pick up passengers without a booking. The fact that the four females were drunk and quarrelling inside the vehicle was an added reason for him not to drive them. Since he said the price and the destination were agreed before the trip to FSH, it was not meant to be a gratuitous trip and he was not merely lending them a helping hand as he claimed. Further, he was at MBS and not at some remote spot. If the four females refused to leave the vehicle and created trouble if he refused to ferry them to FSH, help was surely immediately available from the staff of MBS. Clearly, despite whatever initial reluctance, he agreed willingly to drive them to FSH and the agreed fare was $50, not the token of $16.

78 Finally, the Defence pointed out that the vehicle did not bear the obvious appearance of a taxi, unlike the vehicles in cases such as *Public Prosecutor v Loh Kum San* [2019] SGDC 79 where the private hire car displayed "taxi" signs prominently. However, this does not lead necessarily to the conclusion that the appellant was not plying for hire. The vehicle was stationary at the drop-off and pick-up area of MBS and that gave the four females the impression that it was a vehicle for hire. While he claimed that he had sought to dispel that notion, the fact was that he finally agreed to accept the hire. As I have alluded to earlier, an intention to ply for hire could be formed on the spot and that was apparently what happened in this case.

79 In totality, the evidence showed that the appellant agreed on the spot to ferry the four females from MBS to FSH without a prior booking. This amounted to plying for hire within the meaning of the Second Schedule of the RTA. The vehicle was therefore operating as a taxi on 2 February 2018 and the appellant was convicted correctly on the RTA charge. His appeal against conviction on this charge is therefore dismissed.

My decision on the MVA charge

80 The appellant claimed that he had only the certificate of insurance and not the Insurance Policy with Endorsement B stating that "Rental for use as taxi service is not covered by the policy". It was the appellant's case that he did not use the vehicle as a taxi. In any case, he was not aware that the trip, if it was a taxi service, would not be covered by the Insurance Policy.

81 First, as acknowledged by both parties, the offence under s 3(1) of the MVA is one of strict liability. Second, as the Prosecution has highlighted, there are authorities which state that there must be specific insurance coverage for a particular use of a vehicle. This stands to reason as a matter of common sense and commercial reality. The scope of the use of the vehicle insured would be a factor in determining the premium payable. There are some uses of a vehicle which create more risks of accident or damage.

82 Third, there was the contract dated 20 October 2016 made between the appellant and Section Limousine. The appellant was aware that under clause 3 of the contract, Section Limousine engaged him to render services for its private limousine service. Under clause 5 of the contract, he was "engaged exclusively to provide his services to drive the vehicle as a private limousine and shall not use the vehicle for any unlawful purpose and to engage in any taxi services".

83 Clause 6 of the certificate of insurance (Limitations as to use) states:

> Use for the carriage of passengers or goods in connection with the Policyholder's business or the hirer's business.
>
> Use for social domestic and pleasure purpose and business purposes of the Policyholder or of any person to whom the vehicle is hired.

The Policyholder was stated clearly as Section Limousine. Even if clause 5 of the contract had nothing to do with the Insurance Policy and did not specify that use of the vehicle as a taxi would not be covered by the policy, the appellant knew that he would be covered by insurance only if he was using the vehicle according to the limitations as to use specified in the policy and that meant use in connection with the Policyholder's business or for its business purposes. Its business was to provide a private limousine service, not taxi services.

84 The Defence argued that the Insurance Policy was covered by s 95 of the Malaysian RTA because there was an asterisk at the heading in clause 6 which referred to a footnote stating "Limitations rendered inoperative by Section 8 of the [MVA] and Section 95 of the Malaysian RTA, are not to be included under these headings". Further, the policy stated that it was issued in accordance with the provisions of the MVA and Part IV of the Malaysian RTA.

85 The relevant portion of s 95 of the Malaysian RTA provides:

> Where a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured by reference to any of the following matters:
>
> …
>
> (k) the motor vehicle being used for a purpose other than the purpose stated in the policy,
>
> shall, as respects such liabilities as are required to be covered by a policy under paragraph 91(1)(b), be of no effect: …

The MVA does not have an equivalent of the provision in s 95(k). The Defence argued however that since s 95(k) of the Malaysian RTA applied, the limitations as to use in clause 6 of the Insurance Policy were of no effect.

86 There was also a Chauffeur Agreement dated 20 October 2016 made between the appellant and Section Limousine. This agreement showed a demarcation between usage of the vehicle in Singapore and usage in Malaysia. It provides for a "non-waiverable excess per incident" of $3,500 for accidents within Singapore and $8,500 for accidents within Malaysia.

87 Further, clause 12 in Schedule A of the contract dated 20 October 2016 between the appellant and Section Limousine also provided:

> For Toyota Vellfire 2.4A, it is restricted to travel to Johor, Melaka, Negeri Sembilan and Selangor only and for all other vehicles, it is restricted to travel to Johor only. The [appellant] is to inform [Section Limousine] whenever the Vehicle is required to travel into the abovementioned areas and in no circumstances is the Vehicle allowed to be taken into any other state/country. …

The vehicle here was a Toyota Alphard 2.5 and would be restricted to travel in Johor. Clause 12 indicated again the demarcation of use between the two countries. The clause suggested that although travel to certain states of Malaysia was contemplated, the primary operation of the vehicle would be in Singapore. In fact, the appellant would have to inform Section Limousine if he intended to travel to Johor. It followed that the appellant's usage of the vehicle would be governed by different legal regimes, depending on whether the vehicle was used in Singapore or in Malaysia. As the trip in question took place in Singapore, s 95(*k*) of the Malaysian RTA does not apply here.

88 Based on the above discussions, the appellant's use of the vehicle as a taxi was not covered by the Insurance Policy. Under s 9 of the MVA, an insurer remained liable in respect of third-party risks notwithstanding that the insurer may be entitled to avoid or to cancel the policy. Case law has made it clear that this provision concerns civil liability owed by the insurer to third parties such

as passengers and does not affect the criminal liability of the insured in not having proper insurance cover (see for example, *Saimonn* discussed above). His appeal against conviction on the MVA charge is therefore dismissed.

My decision on the appellant's sentence

89 The DJ has considered the relevant sentencing precedents in arriving at the fines and the 12-month DQ Order. The sentence imposed is correct and cannot be said to be manifestly excessive in any way. In any case, the appellant limited his appeal against sentence to the DQ Order. The appellant also accepted that his appeal against the DQ Order would stand or fall with his appeal against conviction on the MVA charge as there were no special circumstances justifying non-imposition of the statutory disqualification. Any special circumstances must relate to the offence and not the offender. On the facts here, there was clearly no justification for the appellant providing the taxi service to the four passengers on 2 February 2018. The passengers might have been drunk but there were no medical exigencies or other emergencies necessitating the trip by the appellant from MBS to FSH.

90 Accordingly, the appellant's appeal against sentence is also dismissed. The DQ Order was stayed pending his appeal. Upon dismissal of the entire appeal, I ordered the disqualification term to commence from 20 March 2021, the day after the hearing of the appeal, because the appellant drove the vehicle to attend the appeal hearing.

Conclusion

91 For the reasons set out above, I dismissed the appeal on conviction and sentence in its entirety.

Tay Yong Kwang
Justice of the Court of Appeal

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