[2010] JMCA Crim 16

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 21/2009

BEFORE: **THE HON. MR JUSTICE PANTON P.**
THE HON. MR JUSTICE HARRISON J.A.
THE HON. MR JUSTICE DUKHARAN J.A.

ROHAN WHYTE

v

REGINA

Garth Lyttle for the Appellant

Miss Paula Llewellyn Q.C., Director of Public Prosecutions and Alwayne Smith, Crown Counsel (Ag.) for the Crown

2 March and 23 April 2010

PANTON, P.

[1] I have read the draft reasons for judgment that have been written by my learned brother, Karl Harrison, J.A. I agree with his reasoning and conclusion and I have nothing to add thereto. The order of the court therefore is that the appeal is dismissed and the conviction and sentence affirmed.

HARRISON, J.A.

[2] This is an appeal from a decision made by Her Honour Miss C. Wiltshire, Resident Magistrate for the Corporate Area Traffic Court. The appellant was tried and convicted in the Traffic Court for: (i) operating his private motor vehicle as a Public Passenger Vehicle (PPV) without there being in force a road licence, contrary to section 61(5) of the Road Traffic Act; and (ii) operating the said vehicle without there being in force a PPV insurance, contrary to section 4(2) of the Motor Vehicle (Third Party) Risk Law. He was fined $20,000.00 or 30 days imprisonment in respect of the first charge and $2,000.00 or 10 days imprisonment in respect of the second charge. He has now appealed his conviction and relies on the following ground of appeal:

> "The learned Judge of the Traffic Court erred in law in ordering an amendment of the Information upon which the appellant was tried when such Information was considered void in law since it was in breach of section 4 of the Justices of the Peace (Official Seals) Act."

[3] The facts in a nutshell are that both the information upon which the appellant was tried and the summons served on him, bore the stamp and signature of Justice of the Peace, Roy G. Beckford instead of an impressed official seal. The appellant entered a plea of not guilty to the charges and the trial proceeded. At the end of the prosecution's case, a no case submission was made by Mr. Garth Lyttle, Counsel on behalf of the appellant. He submitted before the learned Resident Magistrate that the information and summons were bad in law and were made void by section 4(1) and (2) of the Justices of the

Peace (Official Seals) Act (the Seals Act), which came into operation on 30 August 2004. The section provides as follows:

> "4(1) - From and after the appointed day, every document which is attested to or authenticated by a Justice in the execution of his functions shall bear the official seal, the date of execution thereof and the signature of the Justice.
>
> (2) A document attested to or authenticated on or after the appointed day by a Justice in the execution of his functions shall not be valid unless the requirements under subsection (1) have been complied with."

[4] "Official seal" has been defined in the Seals Act to mean the official seal prescribed for the use of Justices under section 3.

[5] The Justices of the Peace (Official Seals) Regulations 2004 also came into operation on 30 August 2004 and provides as follows:

> "3 (1) Every official seal shall be circular in shape with a diameter of one and one quarter inches and shall, in accordance with the diagram set out in the First Schedule-
>
> (a) bear the identification number of the Justice, as specified in paragraph (2);
>
> (b) identify the parish for which the Justice is appointed;
>
> (c) bear the words "Justice of the Peace", a coat of arms and the two scales of Justice.
>
> (2) The identification number of a Justice shall consist of a six-digit sequence that includes a parish code."

[6] Mr. Lyttle submitted in this court as he did in the court below that for the information to be valid, it ought to have had the official seal impressed on the

document. He argued that since there was no official seal affixed to the documents, the trial was a nullity. He further submitted that any amendment which the Magistrate purported to have made could not cure the defects with respect to the informations as the law had made them void. In the circumstances, Mr. Lyttle submitted that the appeal ought to be allowed; conviction quashed and sentence set aside.

[7] Mr. Alwayne Smith, Crown Counsel (Acting), submitted that the provisions of the Justice of the Peace Jurisdiction Act and in particular sections 28 and 64 have not been affected by the passing of the Seals Act. Section 64 states as follows:

> "64(1) - Every information, complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before examining Justices or a court of summary jurisdiction for an offence, shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.
>
> (2) The statement of the offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence."

Section 28 provides as follows:

> "28 - The several forms in the First Schedule relating to proceedings under this Part or forms to the like effect shall be deemed good and valid and sufficient in law; and it shall

> not be necessary to the validity thereof that the same shall be, or purport to be, made under seal."

[8] Mr. Smith submitted quite forcefully that the intention of Parliament must be ascertained when interpreting a statute. He submitted that when the Seals Act was passed in the Senate in March 2002 it provided in section 11 that the Attestation of Instruments (Facilities) Act and the Voluntary Declarations Act were amended thereby making it mandatory for certain documents to bear the official seal of the Justice of the Peace. Section 4 of the Attestation of Instruments (Facilities) Act which became effective on 30 August 2004, provides as follows:

> "4 - Every oath, affidavit, declaration or other affirmation taken, administered or received by a Justice from any person in writing, in accordance with section 2, shall bear the official seal of that Justice."

[9] Section 10A of the Voluntary Declarations Act which also came into operation on 30 August 2004, reads as follows:

> "10A - Every declaration made, taken or received before a Justice by virtue of this Act, shall bear the official seal of that Justice."

[10] Mr. Smith argued further that section 28 of the Justices of the Peace Jurisdiction Act is a special provision which governs the use of the seal on documents used in criminal court proceedings, while section 4 of the Seals Act is a general provision which governs the use of the seal on certain documents. He

therefore submitted that the principle of generalia specialibus non derogant (general words do not derogate from specific words) should apply in the instant appeal. He referred to and relied on dicta in the House of Lords case of **Blackpool Corporation v Starr Estate Co. Ltd**. [1921] All ER 79 where it is stated inter alia at page 82:

> "…wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the legislature had before provided for specially, unless an intention to do so is specially declared."

Finally, Mr. Smith submitted that since sections 28 and 64 of the Justice of the Peace Jurisdiction Act were not amended by the Seals Act, those provisions have remained intact and the appeal ought to be dismissed.

[11] The short point in this appeal is whether the information upon which the appellant was tried was valid in the absence of an impressed seal being placed on documents by the Justice of the Peace.

[12] It is patently clear to me that it was never the intention of Parliament to alter the position with regard to documents filed and served in relation to court proceedings. Section 4 of the Seals Act on the other hand, is really concerned with documents such as oaths, affidavits, declarations or other affirmation taken, administered or received by a Justice from any person in writing. The move to introduce official seals in the offices of Justices of the Peace is no doubt aimed at minimizing the number of fraudulent documents prepared by unscrupulous

persons. It is therefore obvious why section 11 of the Seals Act amended the provisions of the Attestation of Instruments (Facilities) Act and the Voluntary Declaration Act.

[13] In my judgment, there is indeed merit in the submissions made by Mr. Smith. Both informations upon which the appellant was brought before the court were in conformity with the provisions of sections 28 and 64 of the Justice of the Peace (Jurisdiction) Act (supra).

[14] There is one other matter which I must deal with in this appeal. An enquiry was made by the court of Mr. Lyttle whether or not the defendant had appeared under protest when the matter came up for trial. He has informed this court that at some stage he had mentioned to the Magistrate that he had intended to challenge the court's jurisdiction because the documents before the court were not in conformity with section 4 of the Seals Act. Unfortunately, there is no record of such a challenge being made. It may be helpful if I say a few words on a defendant's voluntary submission to the jurisdiction of the court.

[15] There are cases which state that the want of a summons is cured by the voluntary submission of the defendant to the court's jurisdiction. See for example, **Eggington v Pearl** (1875) 40 JP 56. In that case Brett J. stated as follows:

> "This appears to be so from *Paley on Convictions*, p. 39, "if the defendant appears any irregularity in the summons, or even the want of a summons altogether, becomes immaterial,

> **except it be in a case where a special form of summons is required by the act, which has not been complied with**." *Rex v Aiken,* 3 Burr, 1786, shows that the presence of the defendant and the taking of the evidence in his presence is the essential matter in a question as to the regularity of the magistrate's proceedings. Turner v The Postmaster-General was a case in which two men were brought before a magistrate on one charge, and at the hearing another and a different was preferred, and their solicitor did not object at the moment, and it was held that the want of an information and summons was thereby waived…" (emphasis supplied)

[16] Denman J. also stated in **Eggington** (supra):

> "A man ought to do something by way of protest if he wishes to object that he is not legally brought before a court, ……"

[17] It is therefore abundantly clear to me from the authorities, that a defendant may waive any irregularity by appearing in obedience to the summons without protest. Of course there are exceptions as Brett J., pointed out in the **Eggington** case. But as I have said before, section 4 of Seals Act does not apply to court proceedings which fall under section 64 of the Justice of the Peace (Jurisdiction) Act. In the instant matter, all that was required to be done were complied with under the law.

[18] It is therefore my view that the ground of appeal argued by Mr. Lyttle ought to fail. The appeal should therefore be dismissed and both conviction and sentence affirmed.

DUKHARAN, J.A.

I too agree.