

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MRS JUSTICE FOSTER- PUSEY JA
THE HON MR JUSTICE D FRASER JA**

PARISH COURT CRIMINAL APPEAL NO COA2019PCCR00009

RONALD DAVIS v R

Robert Fletcher for the applicant

Mrs Sharon Milwood Moore and Paulio Williams for the Crown

20 February 2023

ORAL JUDGMENT

D FRASER JA

Introduction

[1] On 24 January 2019, the appellant Mr Ronald Davis was convicted before Her Honour Mrs T Carr, (the learned judge of the Parish Court ('LJPC')) (as she then was) in the Parish Court for Saint Catherine holden at Old Harbour, for the offence of false imprisonment. On 12 April 2019, he was sentenced to nine months' imprisonment suspended for 12 months.

The case for the prosecution

[2] In summary, the case for the prosecution was that on 24 January 2013, at about 7:15 pm, the complainant, Shara-Kay Dacres, was driving her father's motor vehicle along East Street in Old Harbour, when she was signalled to stop by the appellant who was at the time a police officer. He brought her attention to the fact that the right headlight on

her motor vehicle was not working. She explained that she had earlier taken the motor vehicle to a garage to have the light repaired. He then requested her driver's licence and the vehicle documents.

[3] The complainant was unable to provide the requested documents and explained that her father, a police officer, was the owner of the vehicle and could bring the documents. She also indicated that she lived five minutes away and could go and retrieve the documents herself.

[4] The appellant told her that he was going to remove the licence plate from the vehicle and take away the vehicle. He then called over a female officer, Special Constable Princess Bennett, who was later charged as his co-accused, and told her to deal with the complainant.

[5] Special Constable Bennett removed the complainant from the motor vehicle and a scuffle occurred between the two, during which the complainant was assaulted. The complainant was then detained and taken to the Old Harbour Police Station where she was told to go into a cell in the guard room where she remained until her father arrived with the documents.

[6] The complainant was told to come out of the cell by an officer and she saw her father, a Superintendent of Police, the appellant and Special Constable Bennett having a discussion in the guard room. She also saw her driver's licence on a table.

[7] The appellant subsequently told her to go back into the cell and she complied. He told her he was going to charge her as she had too much attitude. The complainant remained in the cell for about another hour and was then given station bail. She indicated that, while she was not wearing handcuffs whilst in the cell, the cell gate was locked.

The case for the defence

[8] The appellant's defence was solely based on an unsworn statement from the dock and, at sentencing, he relied upon a witness as to his good character.

[9] In his unsworn statement, he stated that on 24 January 2013, at about 7:30 pm he stopped a motor vehicle being driven by the complainant because he noticed that the right headlight was not working. He explained his interaction with the complainant, how he requested the assistance of Special Constable Bennett and that the complainant was transported to the Old Harbour Police Station by two other officers.

[10] There was no mention of the detention of the complainant nor any specific mention of the offence of false imprisonment, in his unsworn statement. It was, however, put to the complainant in cross-examination, that the reason she was taken to the station was because she was unable to produce the documents for the vehicle. It was also put to the complainant's father, who also gave evidence, that it is not true that the appellant told him that he arrested the complainant because she had no headlights.

The findings in the court below

[11] The court was of the view that the overarching issue was credibility and that for the offence of false imprisonment, the prosecution must satisfy the court that (1) the arrest was unlawful and (2) the complainant was injuriously imprisoned and detained against her will. The LJPC found that the initial detention of the complainant was by Special Constable Bennett for the offences of driving with one head light and no driver's licence. The LJPC also found that the driver's licence was brought to the station at some point and because of that, a charge was not laid for no driver's licence.

[12] The LJPC further found that the continued detention of the complainant was by the appellant for the offence of no head light. The LJPC stated that the imprisonment or detention would be lawful if it resulted from the power of arrest conferred. For the purpose of this appeal, the key determination of the LJPC was finding number 5 that, "The arrest was unlawful, and Ms Dacres was injuriously imprisoned and detained against her will". It was on this basis that the LJPC concluded that the appellant was guilty of the offence charged.

The appeal

[13] The appellant filed notice of appeal on 23 April 2019 under section 294 of the Judicature (Parish Court) Act ('J(PC)A') and on 1 May 2019, he filed grounds of appeal under section 296 of the J(PC)A. The grounds of appeal advanced were:

- (1) That the verdict is unreasonable having regard to the evidence; and
- (2) That the sentence is manifestly excessive.

[14] On 2 February 2023, the appellant filed a notice of application for court orders, seeking an extension of time to file supplementary grounds, skeleton arguments, documents and authorities in support of this appeal. No objection was taken to the application by counsel for the Crown. The application was in order and was accordingly granted. On the same 2 February 2023, the appellant also filed his supplementary grounds and skeleton arguments, and sought permission to abandon the original grounds and argue a sole supplementary ground as follows:

"Ground 1- The learned parish court judge erred in law and fact in finding that the [appellant] had no lawful power to arrest in the circumstances of the case and that he was required (mandated) to follow a certain course under section 40(1) [sic]. The basis of the verdict of guilty is therefore flawed."

The submissions

Counsel for the appellant

[15] In summary, counsel for the appellant advanced that the crime of false imprisonment requires that the confinement complained of be unlawful. Counsel noted that the LJPC found that the arrest was unlawful as in the circumstances of this case section 40 of the Road Traffic Act of 1938 (as amended up to 2005) ('RTA') requires a notice to be issued and a fixed penalty to be paid. However, counsel argued that, under section 15 of the Constabulary Force Act, police officers have powers of arrest without warrant and that section 40 of the RTA makes it an offence to drive without a head-lamp.

[16] Further, counsel noted that under section 116(2) of the RTA, a constable is given an option to issue a fixed penalty notice. He submitted that while the option to issue such a notice was desirable it was not mandatory, hence the detention of the complainant could not be unlawful, merely because the appellant failed to exercise an option provided to him. Consequently, counsel maintained that the foundation of the verdict was legally flawed. He submitted that the conviction should be quashed, the sentence set aside and a judgment and verdict of acquittal entered.

Counsel for the Crown

[17] The respondent conceded that the LJPC erred when she found that the appellant had no lawful power of arrest and that he was required to follow a certain course under section 40(1) of the RTA. Thus the verdict of guilty of false imprisonment is flawed.

[18] Counsel cited Archbold Criminal Pleadings and Evidence 1999, as to the ingredients of false imprisonment and the fact that an imprisonment will not be unlawful if it results from the lawful exercise of a power conferred by law (see paras. 19 – 331 and 339).

[19] Counsel also accepted that (a) section 15 of the Constabulary Force Act gives officers the power to arrest, without warrant any person found committing an offence punishable upon indictment or summary conviction; (b) section 40 of the RTA makes driving with one head-lamp an offence; and (c) section 109 of the said act makes that offence triable summarily.

[20] Further counsel agreed that while section 116 of the RTA empowered the police to issue a ticket for the offence of having no head-lamp, the power is discretionary and the police are therefore at liberty to arrest and charge for the offence of driving without the required headlights. Consequently, counsel accepted that the complainant having been arrested for having no head-lamp, the LJPC erred when she found that the officer had no right of arrest. Therefore, the LJPC's finding that the continued detention was unlawful, was erroneous as the detention was a continuation of the detention from the initial arrest, when the complainant was taken to the station.

[21] Accordingly, as in the circumstances the officer was properly vested with the power to arrest the complainant, counsel submitted that the conviction should be quashed and the sentence set aside.

Discussion and analysis

[22] The offence of false imprisonment consists of the unlawful and intentional or reckless restraint of a victim's freedom of movement (see Archbold Criminal Pleadings and Evidence 1999 at para. 19-331). An imprisonment will not be unlawful if it results from the lawful exercise of a power conferred by law (see Archbold Criminal Pleadings and Evidence 1999 at para. 19-339).

[23] Section 40 of the RTA makes driving a motor vehicle with one (lit) head-lamp an offence. It provides that:

"(1) ...every motor vehicle shall carry attached thereto—

(a) two similar head-lamps...

...

(3) Every such lamp shall be lighted when the motor vehicle...is in use on any road during the period between one half hour after sunset and one half hour before sunrise.

...

(5) If any person fails to comply with the provisions of this section he shall be guilty of an offence."

[24] Section 109 of the said Act goes on to state that:

"Every offence under, and every contravention of, this Act shall, except where otherwise expressly provided be **tried summarily** and the offence or contravention shall be deemed to have been committed either at the place at which the same was actually committed or in the parish in which the offender resides."
(Emphasis supplied)

[25] Section 15 of the Constabulary Force Act gives the police the power to arrest, without warrant, any person found committing an offence punishable upon indictment or summary conviction. It provides:

“15. It shall be lawful for any Constable, without warrant, to apprehend any person found committing any offence punishable upon indictment or **summary conviction** and to take him forthwith before a justice who shall enquire into the circumstances of the alleged offence, and either commit the offender to the nearest jail, prison or lock-up to be thereafter dealt with according to law, or grant that person bail in accordance with the Bail Act.” (Emphasis supplied)

[26] The offence of having no (lit) head-lamp under section 40 of the RTA is an offence triable summarily, and hence pursuant to section 15 of the Constabulary Force Act, the appellant had the power of arrest in relation to the offence under section 40 of the RTA.

[27] In section 116(b), the RTA goes on to empower the police to issue fixed penalty notices (tickets) for certain offences listed in the Appendix, no head-lamp (under section 40(5) being one such offence. In subsection 2, a constable is given the option to issue a fixed penalty notice. So far as relevant, section 116 reads:

“(1) This section shall apply to any offence created by or under an enactment and punishable on summary conviction —

(a) ...

(b) being an offence specified in the Appendix:

Provided that this section shall not extend to circumstances where, pursuant to section 22, a person is required by a constable to produce his driver’s licence but is unable to do so.

(2) Where a constable finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence to which this section applies, he **may** give him the prescribed notice in writing offering the opportunity of the discharge of any liability to conviction of that offence by the payment of a fixed penalty under this section...” (Emphasis supplied)

[28] As pointed out by the appellant and conceded by the Crown, that power is discretionary as the word 'may' is used, instead of language such as 'shall', which would make it mandatory. It, therefore, follows that the police are at liberty to arrest and charge persons for the offence of driving without the required (lit) head-lamps.

[29] The LJPC accepted that the initial arrest was not done by the appellant but went on to find that the continued detention at the police station, after the complainant's driver's licence and car documents had been brought, was done by the appellant. It was not disputed by the appellant that he told the complainant to return to the cell after her documents were brought and she was released.

[30] However, the LJPC fell into error in her finding at page 65 of the notes of evidence, where she stated that:

"The officer is required to serve the offender a notice to which he can either pay or if the date has passed proceed to court. This is not an offence for which the officer would have the power of arrest."

We agree with counsel on both sides that the police in fact had the power of arrest. This is so even though it may be desirable and the usual practice for fixed penalty notices to be issued instead.

[31] In the circumstances, the arrest of the complainant was as a result of her allegedly being in breach of the RTA and for allegedly assaulting a constable. In respect of the breach of the RTA, the offence of having no (lit) head-lamp under section 40 of the RTA was, pursuant to section 109 of the RTA, liable to be tried summarily. Therefore, pursuant to section 15 of the Constabulary Force Act, the police were vested with the power of arrest for that offence. The "continued detention", as the LJPC phrased it, was not unlawful, as the detention was a continuation of the detention from the initial arrest when the complainant was taken to the station for allegedly having no (lit) head-lamp and assaulting a constable.

[32] Accordingly, the appellant is entitled to succeed on the ground of appeal filed and to have his conviction quashed, the sentence set aside and a judgment and verdict of acquittal entered.

Order

[33] The court therefore orders as follows:

- (1) The appeal against conviction is allowed.
- (2) The conviction is quashed
- (3) The sentence is set aside.
- (4) A judgment and verdict of acquittal is entered.