

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 28/2011

**BEFORE: THE HON MRS JUSTICE HARRIS P (Ag)
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA**

CLIVE ROWE v R

Leroy Equiano for the appellant

Mrs Paula-Rosanne Archer-Hall for the Crown

20 January and 3 February 2012

BROOKS JA

[1] We heard Mr Clive Rowe's appeal on 20 January 2012. At that time we made the following orders:

- a. appeal dismissed;
- b. conviction and sentence are affirmed;
- c. the time already served shall be taken into account;
- d. the appellant shall serve the remaining sentence commencing on 20 January 2012;
- e. reasons to follow.

These are our reasons.

[2] On 12 July 2011, the appellant Mr Rowe was convicted for the offence of corruptly soliciting money contrary to section 14 (1) (a) of the Corruption Prevention Act. He was then a constable in the Jamaica Constabulary Force. The relevant part of the information on which he was charged stated that he:

“...did corruptly solicited [sic] monies from Rohan Green being a gift, favour, promise or advantage for himself or another for ommitting [sic] to prosecute the said Rohan Green for an alleged Breach of the Road Traffic Act in the performance of his public function as a member of the Jamaica Costabulary Force.”

After finding him guilty, the learned Resident Magistrate for the Corporate Area Criminal Court sentenced him to serve nine months imprisonment at hard labour. Constable Odean Grant, who had been charged with a similar offence, along with Mr Rowe, was acquitted after a successful submission that he had no case to answer.

[3] Mr Rowe has appealed against his conviction and sentence. The essence of his appeal against the conviction was that the decision of the learned Resident Magistrate was against the weight of the evidence.

[4] The evidence adduced by the prosecution at the trial, which was accepted by the learned Resident Magistrate, concerned events which occurred on 29 July 2009. At about 9:30 p.m. that day, Mr Rohan Green was driving his motor vehicle in the vicinity of the Canadian Embassy in the parish of Saint Andrew. After crossing an intersection controlled by traffic lights, he was stopped by

police officers travelling in a police service vehicle. They accused him of disobeying the red light.

[5] One of the officers asked for his documents. The words said to have been used by that officer, were "give me your documents and your licence, I going gi [sic] you six tickets". After some further discussion between Mr Green and the officer, the discussion, relevant to the charge, took place. Mr Green's evidence in this regard may be conveniently set out in full:

"He said to me where you going and I said Hope Road and he repeat himself and I said I don't understand what you mean. I said where you going. I said I just tell you where I going and I don't understand what you mean. Then I said to him "alright I going straight" then he repeat and I said I going straight and then him turn to me and said to me "make me tell you what I mean, you going left or you going right. Then he said to me, "are you American or yuh is a Jamaican? You nuh know whe [sic] left or right mean". Then he said to me, "make me tell you what left or right mean". Left mean you a left a money and right mean if me fi write the ticket"."

[6] Mr Green also testified that he told the officer that he had no money. The officer then hissed his teeth and told the second officer to deal with Mr Green. The second officer negotiated for Mr Green to go and get \$2,000.00 and return to give to him. After Mr Green had agreed to fetch the money, that second officer handed back the documents to Mr Green but then retrieved them in order to keep them until Mr Green had returned.

[7] Mr Green said that he left the scene in his car, telephoned another police officer whom he knew (a Special Constable Burrows), got the money from an ATM, met with Special Constable Burrows and went back to the scene with him.

[8] On their arrival at the location, neither the officers nor their car was there. Mr Green said that he made enquiries at various police stations to try and retrieve his documents but the documents were at none of those locations. He did not know any of the officers before. The next morning he made a complaint to the Anti Corruption Unit.

[9] Detective Inspector Clive Brown testified that it was he who received Mr Green's complaint and had a statement, by Mr Green, recorded. That was at about 10:15 a.m. on 30 July 2009. By midday of that day, Det. Insp. Brown was at the Half Way Tree Police Station investigating the complaint. As a result of information received there, he went to the Papine Police Station where he spoke to an Inspector Grant, checked the station diary, made copies of certain entries in the diary and searched a certain police vehicle which had returned to the police station while he was there. Mr Green's documents were not found.

[10] On 31 July, Det. Insp. Brown returned to the Papine Police Station where he interviewed Mr Rowe and Constable Grant. His evidence in that regard was, "I informed them of the allegations and cautioned them individually, Clive Rowe said "Boss me no know wey yu [sic] a talk bout me no stop nobody" Constable

Grant did not made [sic] any statement". Det. Insp. Brown said that he then arrested both constables and took them into custody.

[11] On 5 August 2009, Inspector Ricardo Myers conducted identification parades in respect of each constable. The witness on the parades was Mr Green. He told Insp. Myers that he was there to "identify the police who took my driver's licence and my car papers". Mr Green pointed out Mr Rowe on his parade but did not identify Constable Grant on his. After holding the parades, Inspector Myers communicated with Det. Insp. Brown, who later arrested and charged both constables for breaches of the Corruption Prevention Act.

[12] At the trial, Mr Green identified both constables as the officers with whom he had had the encounter which led to the charges. In particular, he identified Mr Rowe as the constable who used the words quoted above. Mr Green failed, however, to impress the learned Resident Magistrate with his dock identification of Constable Grant and, as was previously mentioned, a submission of no case to answer succeeded in respect of that officer. A similar submission in respect of Mr Rowe failed.

[13] Mr Rowe gave an unsworn statement in which he admitted that there was an encounter with Mr Green but denied that it occurred in the manner which Mr Green had described. He said Mr Green was behaving boisterously and boasting of connections with high ranking persons in the police force. Mr Rowe says that he did have a confrontation with Mr Green but when Mr Green would not calm

down he left him alone. He denied that there was any demand for money or that any documents were taken from Mr Green. He called no witnesses.

The submissions

[14] Mr Equiano, on behalf of Mr Rowe, filed two grounds of appeal:

- “1. The evidence lead [sic] by the Crown was not sufficient to warrant a conviction.
2. The decision of the Learned Resident Magistrate was against the weight of the evidence.”

[15] Learned counsel submitted that Mr Green’s credibility was of the utmost importance to the Crown’s case, since Mr Rowe did not deny the encounter with Mr Green. On learned counsel’s submission, Mr Green’s testimony was plainly demonstrated to the learned Resident Magistrate to be unreliable; this was especially so in respect of the identification of Constable Grant. Credibility, learned counsel submitted, was indivisible and the Crown’s case resting, as it did, solely on the testimony of Mr Green, had no basis on which the learned Resident Magistrate could have properly believed Mr Green’s testimony in respect of Mr Rowe. Mr Equiano submitted that that testimony was no more compelling than the evidence against Constable Grant. There should, therefore, have been no difference in the result and Mr Rowe should also have been acquitted.

[16] The main items identified by Mr Equiano, as damaging of Mr Green’s credibility, were:

- a. the fact that he testified that he had written down the number of the registration plate of the service vehicle on

the night in question, yet it was not recorded in his statement to the police;

- b. the fact that there was no ATM slip put in evidence to support his evidence that he had withdrawn money, from an ATM on the night, to pay the officers; and
- c. the fact that he sought to convince the court that he was able to identify Constable Grant by a scar under the latter's eye and that he was able to see the scar in court, yet that scar was not discernable to the learned Resident Magistrate.

[17] Mrs Archer-Hall, on behalf of the Crown, submitted that the evidence before the learned Resident Magistrate was sufficient to ground a conviction. In response to Mr Equiano's point concerning Mr Green's scar, learned counsel submitted that the learned Resident Magistrate was obliged to consider the case against each accused separately and that she clearly demonstrated that she did so. The learned Resident Magistrate, Mrs Archer-Hall submitted, did not have to consider, in detail, the case against Constable Grant at the time of her summation but that the issue in respect of Constable Grant was one of identification while the issue at summation stage involved observing the witnesses and determining credibility. Learned counsel submitted that the learned Resident Magistrate found the Crown's witnesses, particularly Mr Green, to be credible, as Mr Green was, to use the words of the learned Resident Magistrate, "thoroughly cross-examined but there was no material discrepancy".

The analysis

[18] There was no issue joined concerning the ingredients of the offence having been established; once Mr Green's testimony had been accepted. Being a police officer, Mr Rowe was clearly a public servant at the relevant time. The words, "make me tell you what left or right mean [l]eft mean you a left a money and right mean if me fi write the ticket", said to have been used by Mr Rowe establish that he was soliciting a payment of money in exchange for refraining from performing his public function, namely writing the six, or whatever number of tickets, he deemed were appropriate to the circumstances (see **Dewayne Williams v R** [2011] JMCA Crim 17, delivered 1 April 2011).

[19] Both counsel are in agreement that the issue which faced the learned Resident Magistrate was the credibility of the Crown's witnesses, especially Mr Green's. We accept the submission of Mrs Archer-Hall that the evidence provided by Mr Green was sufficient to convict Mr Rowe. It has been long established that this court will not overturn the findings of a tribunal of fact unless those findings are so against the weight of the evidence as to be "obviously and palpably wrong" (see **Joseph Lao v R** (1973) 12 JLR 1238).

[20] The learned Resident Magistrate, in the statement of her findings of fact, examined the evidence presented. Her judgment was well reasoned. She reminded herself of the appropriate burden and standard of proof for criminal prosecutions and after rejecting Mr Rowe's account, she went back to examine the Crown's case. She considered the omissions which were exposed by cross-

examination and found that there was no material discrepancy in Mr Green's testimony. After that analysis, she found that Mr Green and the other witnesses for the Crown were credible and she accepted their testimony as true.

[21] The learned Resident Magistrate saw and heard the witnesses. She was the tribunal of fact. As long as it was believed, the evidence was sufficient to establish the offence, for which Mr Rowe was charged. We do not agree with Mr Equiano that the finding by the learned Resident Magistrate, that Constable Grant had no case to answer, prevented her from convicting Mr Rowe. The issue of identification loomed large in the case against Constable Grant. Indeed, one of the points made in the no case submission by his counsel was that "[n]o evidence was led by the prosecution that...any officer working that night saw Constable O. Grant leaving the service vehicle on patrol. Sergeant Weir stated that he dispatched both officers not that he saw them leave". The identification of Constable Grant was by way of dock identification only. Identification was not an issue in the case against Mr Rowe, he having placed himself on the scene.

[22] We, therefore, cannot agree with Mr Equiano's submission that the evidence against Mr Rowe was tenuous. Accordingly, the conviction should stand.

Conclusion

[23] The issue to be resolved by the learned Resident Magistrate turned on the credibility of the witnesses that she saw and heard. The evidence that was

placed before her was sufficient to establish that the offence, for which Mr Rowe was charged, had been committed. The witnesses were not discredited in cross-examination. As the tribunal of fact, her findings could not be said to be obviously and palpably wrong. In fact, they were, in our view quite reasonable. The conviction and sentence should not be disturbed.

[24] Mr Rowe was granted bail by a judge of this court, approximately three months after he had commenced serving the sentence imposed by the learned Resident Magistrate. It was, therefore, important to ensure that the order concerning sentence reflected that fact, so that there would be no duplication of that time.

[25] It is for those reasons that we ruled in the manner set out at the paragraph [1].