[2016] JMCA Crim 22

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 23/2014

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE WILLIAMS JA (AG)

PATRICK WILLIAMS v R

Peter Champagnie for the appellant

Miss Sasha-Marie Smith for the Crown

3 February and 24 June 2016

BROOKS JA

[1] I have had the privilege of reading, in draft, the opinions of both my learned sisters. I am of the view that the standard to be used in assessing the approach of the learned Resident Magistrate is that which has been applied by Williams JA (Ag). I agree with her reasoning and conclusion and I too hold that the appeal should be dismissed and the conviction and sentence affirmed.

SINCLAIR-HAYNES JA (DISSENTING)

[2] The appellant Patrick Williams, Sergeant of Police, was charged pursuant to section 14(1)(a) of the Corruption Prevention Act. It was alleged that he, being:

> "a public servant to wit: A member of the Jamaica Constabulary Force on the 18th day of February 2008 corruptly accepted the sum of three thousand five hundred dollars directly from Delroy Dunn being a gift for [himself] or some other person to do an act in the performance of [his]public function to wit: to release a white Station wagon Toyota Corolla motor car registered PD 3594 which was seized by[him] for Breaches of the Road Traffic Act."

He was tried, convicted and sentenced to 12 months imprisonment by Resident Magistrate, Her Honour Mrs Bertram Linton (as she then was).

[3] I have read the decision of P Williams JA (Ag); I must however express my dissatisfaction with the perfunctory manner in which the learned magistrate dealt with the matter. In the main, apart from regurgitating the evidence, there was little attempt at weighing the evidence in order to ensure a just result. The learned magistrate has also not demonstrated that she appreciated the crux of the appellant's case.

The Crown's case

[4] In support of its case, the prosecution relied on the testimony of seven witnesses, Paul Mitchell, Constables Patricia Webley, Leonard Thomas and Winston Hardy, Detective Sergeant Leonard Morris, Deputy Superintendent Leon Clunis and Sergeant Sheryl Campbline.

[5] Mr Paul Mitchell, a taxi driver, was the virtual complainant. It was his evidence that about 7:00 am on 18 February 2008, he was operating a vehicle which belonged to Ms Green and which Mr Dunn had given him to operate as a taxi. This vehicle was licensed to operate

the Three Miles/Half Way Tree area. He however went outside of his designated area and was accosted by the appellant, who was riding a motor cycle. He had known the appellant before because he had been stopped on a previous occasion by him. The appellant removed the key from his vehicle and asked him to produce his driver's licence and the documents for the vehicle. The appellant instructed him that he would return soon and he (the appellant) rode away. He returned about five minutes later with a wrecker. The car was taken away and Mr Mitchell went to the Elletson Road Police Station.

[6] About two hours later, the appellant rode unto the premises of the Elletson Road Police Station and went into the CID office. Mr Mitchell enquired of the appellant about the summons and was told that it was not ready. He spoke to Mr Dunn by way of telephone outside the hearing of the appellant. Mr Dunn attended the Elletson Road Police Station about half an hour later.

[7] Mr Dunn asked the appellant to do something for him. The appellant told him he could "but is $20.000". Mr Dunn told him he could only pay $15,000.00. The appellant, he said, told Mr Dunn "the business can go on but don't let 2 o'clock pass or the deal is off". According to the complaint, he understood that the appellant was referring to a transaction "towards the car".

[8] Mr Dunn spoke further to the appellant who said, "I hope you don't [f...] me up and come by 2 o'clock".Mr Dunn, Mr Mitchell said, assured the appellant he would not because they had been friends for a long time. The appellant rode out of the compound. He and Mr Dunn went to the "police place at Orange Street" where they reported the matter and gave a

statement. There the police provided nine fake $1,000.00 bills, three genuine ones and a genuine $500.00 bill. An elastic band was used to wrap the notes and given to a female police officer.

[9] They (Mr Mitchell, Mr Dunn and the female police officer) were conveyed into an unmarked police vehicle to a gas station on Elletson Road. From there, they walked to the Elletson Road Police Station. The appellant was not seen and so Mr Dunn telephoned him.

[10] They proceeded to a playfield on the compound and stood under a tree. The appellant who was in an upstairs building, hailed them. They approached him and he instructed them to accompany him to a place in the front where cars were parked. He left them for a while and returned.

[11] Mr Dunn introduced the female police officer to the appellant as his baby's mother. The appellant told him that he did not like doing business with women. Mr Dunn however assured him that she was "all right".

[12] Mr Dunn left and returned with a jelly coconut and enquired if anyone had a knife to cut it. He cut the coconut and drank its water. On the appellant's instructions they entered a taxi. Two persons entered the front and four in the back, including the appellant. Mr Mitchell did not know who the two men were. The appellant informed them that they were going to the Central Police Station.

[13] Whilst on route, on East Queen Street, the appellant asked Mr Dunn for $10,000.00 which he said he needed to pay a police man at Central Police Station to sign the paper. The

female police officer gave the "prepared" money to Mr Dunn who handed it to the appellant. The car stopped and the appellant and Mr Dunn alighted from it and went to Central Police Station. Mr Mitchell and the female police officer came out of the car. She made a telephone call and five minutes later the appellant and Mr Dunn returned.

[14] A green police car drove past the taxi that had transported them and stopped. A policeman who was dressed in civilian clothes exited and the appellant pulled his firearm from his waist. The policeman said, "a me Willy, a me Willy". Mr Mitchell was unable to say whether that person had anything in his hand because immediately after the appellant drew his gun, he "ducked behind the taxi".

[15] Under cross-examination, it was Mr Mitchell's evidence that he had begged the appellant for a chance. It was his evidence that he did not know that the vehicle could be seized for operating contrary to the road licence or for excess passengers. It was also his evidence that he did not tell the police to whom he made the report that the vehicle was seized for "operating contrary" because they never asked. He immediately thereafter said the police asked him why the vehicle was seized and he told them "for having four (4) passengers in the vehicle".

[16] Constable Patricia Webley testified that on 18 February 2008, at about 2:30 pm she was introduced to two men who were complainants in a matter and was given certain instructions by Deputy Superintendent of Police Clunis (then Inspector). A coil of money wrapped in a red and green plastic bag was handed to her. She and the two men were taken in an unmarked police vehicle to the vicinity of Elletson Road and Victoria Avenue.They exited the car and

walked towards the Elletson Road Police Station. One of the men made a telephone call. About 7 minutes later the appellant came and spoke with one of the men.

[17] The appellant was told by one of the men (Mr Dunn) that Constable Webley was his girlfriend and the car was hers. It was her evidence that in order to convince the appellant that she was the owner of the car and Mr Dunn's girlfriend, she said that she was going to sell the car because of the problems she was having fixing it and "paying money". The appellant told her she did not have to sell the car, she just had to comply.

[18] A green car drove up with two men aboard and the driver said something to the appellant. He instructed the men to wait and he left with Mr Dunn to the traffic headquarters building. Mr Dunn returned and told her something. The appellant came after and he invited them into the green car which they boarded. Constable Webley was seated in the back seat of the vehicle, behind the front passenger's seat and beside the appellant, who was sitting close to the door.

[19] The car travelled and stopped in the vicinity of the Kingston Central Police Station. The appellant removed some papers which he had in a black bag. He asked the other complainant (Mr Mitchell) if the papers, which resembled car documents, were his. He then asked Mr Dunn for $10,000.00. Constable Webley took the coil of money from her bag and handed it to Mr Dunn who gave it to the appellant.

The appellant invited Mr Dunn to accompany him to the Central Police Station and they both went across the road and entered the Station. She and Mr Mitchell got out of the vehicle, stood on the sidewalk where she made a telephone call.

[20] A vehicle which was assigned to the Anti Corruption Branch arrived while the appellant was coming out of the Kingston Central Police Station compound. The appellant looked in the direction of the vehicle. Sergeant Morris got out of that vehicle and the appellant bent down and took from his side something which resembled a firearm which he pointed towards Sergeant Morris and ran into a nearby lane.

[21] It was Constable Leonard Thomas' evidence that he participated in a sting operation. He marked the initials "D.D" on $3,500.00 and nine fake $1,000.00 bills and he went to Elletson Road Police Station, where he observed Messrs Dunn and Mitchell, Constable Webley and the appellant (whom he did not know before) conversing.

[22] Constable Winston Harding's evidence was that he participated in the "sting" operation. He and Constable Thomas were taken to Elletson Road Police Station. There he saw Messers Dunn and Mitchell with Constable Webley speaking with the appellant. They entered the back of a car as there were two persons in the front. The vehicle drove out of the compound.

[23] He was transported in a vehicle, with Sergeants Morris and Swaby and Woman Corporal Campbline to East Queen Street, which stopped in front of Central Police Station. The appellant and Mr Mitchell were attempting to cross the road in front of the vehicle that the police officers were in. The appellant walked in front of the vehicle with Mr Mitchell behind him.

[24] Constable Harding's evidence was that the appellant looked in the direction of the vehicle the police officers were in and swiftly pulled his firearm which he pointed at Sergeant Morris who did not have anything in his hands. Sergeant Morris, he said, sought refuge

behind the car. The appellant ran off in the opposite direction from which the police was coming. He and Sergeant Morris then pulled their firearm and pursued the appellant who fled with his firearm onto premises on Georges Lane.

[25] About 10 seconds later, the appellant ran back onto the road. Sergeant Morris pointed his firearm at the appellant who was still armed and shouted, "Willy, Willy, Willy". The appellant, at that point, stopped, bent down and placed his firearm in the middle of the road and ran off at an even faster pace. Constable Harding pursued the appellant who ran onto premises on Hanover Street. He did not pursue the appellant further because he considered it unsafe to do so. Sergeant Morris later joined him and they spoke. They examined the premises on Georges Lane onto which the appellant had fled. They then returned to Elletson Road Police Station.

[26] It was Constable Harding's evidence under cross-examination that he was wearing plain clothes but he never identified himself as a police officer. He never caught up with the appellant because he did not run with "any great effort" because the appellant's firearm was in his hand and he was not there for a shootout. He only pulled his firearm out of caution. He however testified that after the appellant had placed his firearm on the ground he continued to pursue him with his firearm in his hand because he did not want to stop.

[27] Detective Sergeant Leonard Morris testified that he was a part of the sting operation at Elletson Road. He observed Mr Dunn and another man, Woman Constable Webley and the appellant coming from a playfield. They were talking and the appellant had documents in his hand.

[28] Sergeant Morris received a telephone call and headed for Central Police Station in a vehicle. On reaching close to the entrance to Central Police Station he saw the appellant and a man leaving the Station; the appellant was seen with documents in his hand. As the appellant was passing the door of his vehicle, he threw his door open and "rushed out". The appellant went behind a vehicle on Georges Lane, pulled his firearm and pointed it in his direction whereupon he pulled his firearm and pointed it and shouted loudly, "Willy Willy a me man". He took cover behind the car after he shouted. The appellant ran down Georges Lane. He and Constable Harding chased the appellant who ran into premises on Georges Lane.

[29] The appellant emerged about two seconds later, stopped in the middle of the road, and "[took] his own time and put down his firearm then ran". Sergeant Morris took possession of the firearm and Constable Harding continued the chase. He too was dressed in plain clothes.

[30] Deputy Superintendent of Police Leon Clunis' evidence was that he supervised the sting operation and conducted the question and answer session that was later held with the appellant.

[31] Sergeant Sheryl Campbline was responsible for causing the money to be marked. She testified that she and Sergeants Swaby and Morris were on an operation. She saw the appellant walking from the direction of the playfield at the Elletson Road compound and towards the traffic headquarters in the company of Messrs Mitchell and Dunn, and Constable Webley. He appeared to have been in conversation with Messrs Mitchell and Dunn. He had a small black bag and some papers in his hand. At no time that day she saw him with a coconut.

[32] On information received, Sergeant Campbline along with Sergeants Swaby and Morris and Constable Harding went to the Central Police Station. There she saw the appellant, along with Mr Dunn, walking across the road and alongside the parked vehicle. Sergeant Morris "pushed the car door open" and the appellant pulled a gun from his waist and aimed at Sergeant Morris "who alighted from the car and shouted, Willy, Willy". Sergeant Morris, she said, was unarmed. According to this witness, the gun "was moving between Sergeant Morris and Delroy Dunn", who was "in close proximity". Sergeant Morris took cover and attempted to reach for his gun.

[33] The appellant ran onto Georges Lane. Constable Harding alighted from the vehicle and pulled his firearm. He and Sergeant Morris chased the appellant. Sergeant Campbline saw Sergeant Morris coming up Georges Lane with a firearm in his hand.Under cross-examination, she said she did not see the appellant and Mr Mitchell leaving the compound of Central Police Station. She did not see Messrs Mitchell and Dunn and Constable Webley standing on the side of the road. According to her, the appellant was "in good condition" when he was handed over. It was also her evidence that the invoice from the pound stated that the vehicle was seized for safe keeping. Vehicles are seized for safe keeping in circumstances where the person is arrested and there is no one to take "charge" of the vehicle she said.

The defence

[34] The defence's version of what transpired was diametrically opposed to that of the prosecution. The appellant categorically denied the allegations of solicitation made against him. He denied speaking to Mr Dunn on the telephone and arranging to meet with or meeting Mr Dunn, "his girlfriend" and Mr Mitchell at Elletson Road Police Station. He also denied having

had papers or a bag in his hand whilst he was coming out of the car on East Queen Street, receiving money from anyone; or that he went over to the Central Police Station with Mr Dunn. He denied that anyone said, "a me Willy a me Willy". Nor did anyone shout, Willy, Willy, Willy". He also denied that he ran down Georges Lane or went on premises onto Hanover Street.

[35] It was his evidence that the morning of the incident his team was directed by Senior Superintendent of Police Elon Powell "to do a zero tolerance operation". Whilst on duty, he observed passengers entering and leaving a white Corolla motor car. Accordingly, he stopped the vehicle and upon enquiring of the driver if he was the holder of a route taxi licence, the driver admitted that he was not. He caused the vehicle to be seized because the offence was not "a ticketable" one.

[36] He instructed the driver to report to the traffic headquarters the following day for a summons for operating contrary to his road licence. It was his evidence that persons from whom vehicles are seized for operating "contrary" must attend the Elletson Road Police Station for summons. He and his team worked until 2:00 pm that day.

[37] He was without a motor vehicle because his had developed mechanical problems and was consequently parked at his home. He had arranged with his friend, whose name he knew to be "Bush", to either take him home or to place where he could get transportation to take him home. "Bush" met him at the Elletson Road Police Station. The vehicle was driven by someone whom "Bush" introduced as "Craig". "Bush" removed from the front passenger seat and sat at the back, and allowed him (the appellant), to sit in the front passenger seat.

[38] As the vehicle was in the process of "moving off" and before it drove off the compound, he was hailed by two men who shouted, "father Willy, father Willy I want to talk to [you]". The driver stopped the vehicle and one of the men approached him and spoke to him. He discovered that that man was Mr Dunn whom he knew as "Cutter". Cutter was related to his friend who owned a garage in "Back To". He was accompanied by Mr Mitchell and Constable Webley whom he did not know before. Constable Webley was however introduced as the mother of Mr Dunn's child.

[39] As the vehicle was about to leave, Mr Dunn him asked for a "lift" and he acquiesced. They (Mr Dunn, Mr Mitchell and Constable Webley) entered the car. Whilst the vehicle was in the process of moving off, Mr Dunn and Constable Webley entreated him to release the vehicle. According to him, they began "to make advances". They said, "Mr. Willy also do something for me no release the car for me no".

[40] He told them that the superintendent was the person to release the vehicle and not him. His evidence was that vehicles could not be released by persons below the rank of a deputy superintendent. The car travelled towards downtown and he caused the vehicle to stop at the intersection of East Street and East Queen Street where he informed them he would leave them.

[41] He went to a vendor from whom he was purchasing a bottle of water. A green tinted motor vehicle drove up and an unknown young man exited the vehicle armed with a fire arm which was pointed in his direction. In fear of being harmed, he pointed his firearm at this man whilst he moved away backwards. In the process he collided with a wall and injured

himself. In turning, he lost his balance, fell and lost his firearm. He later discovered that he had also lost his telephone.

[42] He fled onto East Street where he found sanctum in a woodwork shop. He was unable to telephone the police because during his flight he had dropped his telephone. In fear he hid in the workshop. About two hours later, a man from the shop accompanied him to the City Centre Police Station. The officer there refused to take his report. He telephoned two officers from the traffic headquarters and informed them of what had happened and that he was going home. He went home because he was "stressed out". The following morning he told Superintendent Powell and Inspector Cambrie about the incident and he was instructed to attend the station.

[43] The appellant's evidence was that he saw nothing wrong with taking the person he was about to prosecute in the vehicle he was travelling in. He said he was being nice to Mr Dunn because he knew a relative of his whom he knew from the garage. He did not consider him a security risk.

[44] Mr Errol Bailey, Ms Rosemarie Rowe, Mr Balvin McKenzie, and Bishop Horace Gaynor testified on behalf of the appellant.

[45] Mr Bailey's evidence was that he is a welder. Before the incident he had repaired the appellant's car. At about 1:45 pm on 18 February 2008, the appellant spoke to him on the telephone. He consequently went to Elletson Road with Craig Shaw in a taxi he was repairing. Mr Shaw was the driver. They collected the appellant at the Elletson Road Police Station. The appellant sat in the front passenger seat and he sat behind him.

[46] He said they were stopped in the station by two men and a woman. One of the men asked the appellant if he could release the car. The appellant told him that he did not release cars. He instructed him to return the following day and he would "then try to see how best he [could] help him".

[47] They inquired which direction he was headed and the appellant told them he was going in the downtown area. The man, who had asked about the release of the car, asked if he if he would be able to take the woman and the man. The appellant consented. He (Mr Bailey) was seated in the back and he remarked to the driver that there were four of them in the back and that "he should mine overload". The driver however told him not to worry because they were "travelling with police".

[48] They drove from the station onto Elletson Road and East Queen Street. At the intersection of East Street and East Queen Street, the appellant asked the driver to stop and allow him to get a bottle of water from a vendor. The driver acceded to his request and stopped at the intersection of East Queen Street.The appellant went towards the vendor. After the appellant got out of the car, the woman who sat beside him placed "a rack of [folded] thousand dollars" where the appellant had been seated. A green car "cruised up right behind [their] vehicle" and stopped about 2 feet from theirs. A short man alighted from the green car with a gun in his hand and pointed the gun at the appellant "who was just about to get the water". The man was about 10 to 12 feet from the appellant.

[49] It was also Mr Bailey's evidence that after the short man pointed his gun at the appellant, another man alighted from the front of the car with a gun which he pointed at the appellant. He thought the men were criminals.

[50] The appellant pulled out a gun and pointed it at "them". The appellant "step back" and persons began to "scream and scamper over the place". While the appellant was stepping backwards, he spun around but was too close to the wall so he fell. It was his evidence that he saw the appellant's gun on the ground and then he (the appellant) got up and ran. He said after the appellant pulled his gun, the men "got low" which allowed the appellant the opportunity to run.

[51] He consequently spoke to Craig and ran in the direction they were coming from because they did not know what was happening. They ran about two chains from the car. Other persons alighted from the green car.

[52] About two to three minutes later they began walking back to the car. While they were approaching the car, he saw the lady, who had put the money on the seat where the appellant sat, laughing. He went into the taxi but he did not see the money. It was also his evidence that at no time did he hear the appellant ask for $10,000.00 to sign papers.

[53] Under cross-examination, in an effort to impugn his credibility, he was confronted by his statement to the police in which he had stated:

> "After he waived [sic] his firearm he backed up and hit wall, gun fell and he ran off."

[54] Ms Rowe's evidence was that on 18 February 2008, sometime after 2:00 pm, she was selling juice and snacks at her stall on East Queen Street. She was about to sell the appellant a bottle of water when a green car drove up. It was her evidence that:

> "A man step [sic] and the man buying the water step [sic] back on me. There was a young man coming from the other side of the car, the green looking car. He actually [sic] like he was coming after the person, when I see [sic] that I get [sic] scared myself so I stop [sic] selling, never worry to hand him the water. The man buying the water slide [sic] and back back on me, I ran from there go back to East Queen Street side.
>
> The man who came from the green looking car had a gun; I don't remember the exact clothes he had on. In [sic] ran straight down on East Queen Street. I went and stand in a wholesale for twenty (20) minutes or so, stayed there till everything blow over then I came back to the stall."

[55] Under cross-examination she said when the man came out of the green car the "appellant stepped back and said "raatid gunman" and he slid backwards on her. He stepped on her foot and bounced into her side. She said:

> "he bounced [her] sideway [sic] and head to the wall.
> His face went into the wall.
> I don't remember his back up against the wall.
> It was more side up."

[56] It was Mr McKenzie's evidence that on 18 February 2008, sometime after 2:00 pm, he saw the appellant "running from East Queen Street coming down on East Street". The appellant told him that he was being chased by a gunman and asked him to close the shutters to his shop. He saw blood on his face and felt sorry for him. He pulled his shutters down and questioned the appellant who told him that he was attacked by a gunman on East Queen

Street and he had fallen and hit his mouth. The appellant asked him to look outside. He did and he told him "it was clear". Upon speaking to him he discovered he was a policeman.

[57] The appellant asked him to accompany him to the City Centre Police Station but he did not want to be branded a police informer so he told him that he had to get back to his work. He saw the appellant again in December 2009 and January 2010.

[58] Bishop Horace Gaynor, a minister of religion, testified that he was "shocked" when he heard that the appellant was charged because he knew him to be "a very honest straight forward individual". He never knew him to be involved in any "shady dealings or anything dishonest". He testified that the appellant always requested prayers as it was his desire to return to church. He said the appellant was very helpful to the church.

The Resident Magistrate's treatment of the evidence

[59] The learned magistrate synopsized the evidence of each prosecution witness. The learned magistrate commented thus on Constable Webley's evidence:

> "What struck the court in particular about his witness was that there was no reason for the officers at internal affairs given or suggested by the attorney for the [appellant] why the police should concoct this scheme merely to entrap a colleague in these circumstances.
>
> The plan would have been easily thwarted if the [appellant]had not been as the two (2) men had complained willing to take the money as they said had been agreed. It was a test of integrity and credibility that was being undertaken**. This officer's evidence was not discredited in any material particular.** Importantly, she asserts of the subsequent confrontation, that the [appellant] pulled his firearm merely in response to the officers stepping out of

> their vehicles and that no one else had a firearm out before that." (Emphasis and underline mine)

[60] Regarding the appellant's evidence she said:

> "The [appellant] gave evidence in this matter and the court noted carefully his account of the incident stating clearly that he made no arrangement and collected no money and the factors operating on his mind while he acted during the course of the incident. His demeanor in the witness box was especially noted and in particular his assertion that he knew of no force order which prevented him from travelling in the way he did with a person he had prosecuted. This last comment was note-worthy [sic] for the court as the concept of good moral judgment in those circumstances seemed either lost on the [appellant] or totally ignored."

She made short shrift of the appellant's witnesses. She said:

> "Witnesses Rowe, McKenzie and Bailey's evidence were also noted and reviewed in detail when the court came to make a decision. They did not in the court's opinion go to the root issue to be decided by the court which was whether [the appellant] had taken the money based on the arrangement. The evidence of Horace Gaynor will be looked at separately.
>
> The [appellant] has no obligation to put up a defence but where this is done it should be considered carefully. This was done by this court and all the evidence given by the [appellant] and on his behalf is duly noted**. In particular evidence of previous good character given was taken into account and given specific consideration especially with regard to the [appellant's] propensity to commit the offence alleged by the prosecution.**
>
> The evidence of Mr Horace Gaynor, Minister of Religion and Bishop of the Church of Jesus Christ Worship Centre was fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican courts." (Emphasis supplied)

She then quoted the following passage of Lord Taylor of Gosforth C J in the consolidated cases

R v Vye; R v Wise; R v Stephenson [1993] 3 All ER 241.

[61] She also said:

> "The prosecution has merely to prove that the [appellant] received a gift as an inducement to show favour in circumstances of having received a gift. R v Carr 1957 1WLR 165 Archbold Criminal Pleading Evidence and Practice posits that 'where in any proceedings against a person for an offence under the Prevention of Corruption Act or Public Bodies Corrupt Practices Act, it is proved that any money, gift or other consideration has been paid or given to or received by a person in employment of Her Majesty or any government department it is deemed to be paid or given or received corruptly as such inducement or reward unless the contrary is proved.' The Onus of Proof on the prosecution remains 'beyond a reasonable doubt' but on a balance of probability for anything the [appellant] is called upon to establish. **R v Carr-Briant** 1943 KB 29:29 CRI APP REP 76." (Emphasis as in original)

[62] The learned magistrate arrived at the following findings of fact:

> "The court believes that the Prosecution's witnesses are witness of truth and finds as follows:
>
> 1. [The appellant] prosecuted Mr. Paul Mitchell for a traffic offence and seized the vehicle he was operating as a consequence of the prosecution.
>
> 2. That the [appellant] met with Mitchell and Dunn and agreed to release the vehicle for a fee of Fifteen Thousand Dollars ($15,000.00).
>
> 3. Mitchell and Dunn contacted the anti corruption branch and a sting operation was arranged.
>
> 4. The court accepts as independent and truthful the evidence of Constable Webley the female police officer who was in the car on the drive from Elletson Road to Central Police Station, that [the appellant] accepted the money and that the reason was that it was a bribe to secure the release of the seized motor vehicle, that had been driven by Mitchell.

5. The court specifically rejects as implausible any evidence that Constable Webley or any other parties placed the money on the seat of the motor vehicle as this was not in keeping with the stated objective of the sting operations [sic] and Miss Webley's presence in the car.

6. The court finds that the [appellant] upon being confronted recognised the police officers, and in keeping with this recognition and his knowledge that something illegal and corrupt was being undertaken on his part sought to escape the scene and did..."

[63] Being aggrieved by the learned magistrate's findings and decision, the appellant filed six grounds of appeal, as follows:

"1. The Resident Magistrate erred when she held that the issue of dock identification did not arise in this case.

2. The Resident Magistrate failed to give herself the appropriate warning in relation to the evidence of Patricia Webley, Leonard Thomas and Winston Harding and their identification of the Appellant in the dock.

3. The Resident Magistrate failed to consider the evidence of [the] Appellant's witnesses, namely, Rosemarie Rowe, Balvin McKenzie, Errol Bailey and Bishop Horace Gaynor in coming to her verdict.

4. The Resident Magistrate failed to adequately address the issue of the several inconsistencies in the evidence of the prosecution witnesses.

5. The sentence of twelve [months] imprisonment was [sic] harsh and excessive having regard to the social inquiry report prepared by the Probation Department in the matter and the Appellant's prior unblemished record in the Jamaica Constabulary Force.

6. The verdict is unreasonable having regard to all the evidence in the case."

At the hearing of the appeal, counsel for the appellant abandoned grounds 1, 2 and 4 and relied only on grounds 3, 5 and 6.

Grounds 3 and 6

> **The Resident Magistrate failed to consider the evidence of the appellant's witnesses, namely, Rosemarie Rowe, Balvin McKenzie, Errol Bailey and Bishop Gaynor in coming to her verdict.**
>
> **The verdict is unreasonable having regard to all the evidence in the case.**

Submissions on behalf of the appellant

[64] Mr Champagnie, on the appellant's behalf, complained that the learned magistrate, in her review of the evidence, failed to pay sufficient regard to the evidence of the appellant's witnesses. He submitted that the learned magistrate dealt with the evidence of the prosecution's witnesses in some detail. The learned magistrate, he said, demonstrated that she understood the crux of the prosecution's case by her statement. He however said that the same attention was not accorded the evidence of the appellant's witnesses.

[65] Learned counsel submitted that the learned magistrate fell into error when she failed to analyse the evidence of Mr Errol Bailey, who said he did not see the appellant receive $10,000.00 while in the taxi. The learned magistrate, he said, further fell into error when she found that Mr Bailey's evidence did not go to the root of the case. He submitted that her failure to appreciate the appellant's case was manifest in her conclusion that the deciding issue was whether the appellant had arranged to receive money to return the vehicle. He posited that the important issue was that of credibility.

[66] Learned counsel pointed out that the learned magistrate has not provided any reason for having rejected the evidence which was adduced on behalf of the appellant. She merely stated that she believed the prosecution's witnesses to be truthful. He argued that her failure to provide reasons for not finding the appellant's witnesses to be credible is an indication that she did not assess the evidence in arriving at her conclusion.

[67] Mr Champagnie also submitted that the learned magistrate's directions on the issue of the appellant's good character were also deficient as she failed to address the issue of credibility, in the light of the appellant's sworn testimony. Her treatment of Bishop Gaynor's evidence was a clear indication of that, he said.

Submissions on behalf of the prosecution

[68] On behalf of the Crown, Ms Smith concurred that credibility was in fact the main issue. She however submitted that it was the learned magistrate's right, as the arbiter of the facts, to disbelieve the appellant's witnesses. According to Ms Smith, it was sufficient that the learned magistrate had indicated that she had noted "all the evidence" given by and on behalf of the appellant. She further submitted that the learned magistrate reminded herself that the burden of proving the appellant's guilt rested with the prosecution.

[69] Learned counsel however conceded that the learned magistrate's statement that the evidence given by the appellant's witnesses "did not go to the root issue to be decided by the court" was not an accurate assessment of the significance of Mr Bailey's evidence as it supported the appellant's assertions that he did not receive any money from Mr Dunn while he

was in the taxi. She submitted that the learned magistrate must have assessed the testimony of the appellant's witnesses before accepting the prosecution's witnesses as credible.

[70] Accordingly, she submitted that in all the circumstances, this court ought not to disturb the verdict because of the learned magistrate's failure to provide reasons. She referred the court to the statement of Bingham JA (Ag) (as he then was) in **R v Horace Willock** SCCA No 76/1986, delivered on 15 May 1987, at page 5, where he said that:

> "Despite this, however, the absence of reasons or findings in the summation would not necessarily provide a basis for disturbing the verdict of the learned trial judge, who as the tribunal of fact, had the clear and distinct advantage of seeing and hearing the witnesses at the trial and of weighing and assessing the demeanour of the witnesses. There is nothing to indicate from a careful examination of the summation that the learned trial judge did not make ample use of the opportunity that he had in this regard. Provided therefore, that on an examination of the printed record, there existed material evidence upon which there as a sufficient basis for the learned trial judge to come to the decision at which he arrived, there would be no reason for this Court to interfere with the decision at which he arrived."

Discussion/Analysis

[71] Both Mr Champagnie and Ms Smith have correctly identified credibility as the important issue. Credibility being the important issue, the learned magistrate's treatment of the appellant's evidence and that of his witnesses was inadequate. The mere outlining of the evidence of the prosecution's witnesses without providing the reasons for her decision was not sufficient.

[72] Careful examination of the evidence was therefore crucial in the circumstances. The learned magistrate was required to state the aspects of the witnesses' evidence and the

factors which she noted assisted her in arriving at her decision. Without the assistance of her reasons, it remains a mystery as to what factors she considered "operating on [the appellant's] mind", when she stated:

> "the **court noted carefully** [the appellant's] account of the incident stating clearly that he made no arrangement and collected no money and the **factors operating on his** mind while he acted during the course of the incident."

Assuming irrelevance constituted no part of her thought process and she correctly noted relevant factors, having so noted, how did she treat with them?

[73] Ms Smith has rightly conceded that the learned magistrate's finding that Mr Bailey's evidence did go to the root of the issue to be decided, was not an accurate assessment of the significance of Mr Bailey's evidence. Mr Bailey's evidence, and indeed all the witnesses for the appellant required more than the flippant treatment it was accorded by the learned magistrate. Contrary to her finding, his evidence concerned the very kernel of the charge against the appellant: Did the appellant corruptly accept the sum of $3,500.00 directly from Mr Dunn to release the motor car as charged?

[74] Mr Bailey's evidence supported the appellant that he did not collect any money from Constable Webley. Careful examination of his evidence was therefore necessary. His evidence was that Constable Webley placed the money on the appellant's seat after the appellant had come out of the vehicle. Constable Webley's evidence was that she passed the money to Mr Dunn who handed it to the appellant. Mr Dunn however did not attend the trial.

[75] The bifurcation in the versions presented by appellant and the Crown warranted, in my view, more than the perfunctory treatment it was accorded by the learned magistrate. The learned magistrate's sole attempt at proffering a reason for rejecting the appellant's evidence was:

> "His ... assertion that he knew of no force order which prevented him travelling in the way he did with a person he had prosecuted. This last comment was note worthy [sic] for the court as the concept of good moral judgment in those circumstances seemed lost on the [appellant] or totally ignored."

The appellant's act of allowing the person whom he prosecuted and whose car he had caused to be seized to ride in the same car with him was not enough to satisfy the charge beyond a reasonable doubt in the light of the evidence given by the appellant's witnesses.

[76] The learned magistrate was confronted with two different and competing versions. She was obliged to provide her reasons for rejecting Mr Bailey's evidence and preferring instead that of the prosecution's.

[77] Inasmuch as the issue of credibility was exclusively hers, thus entirely within her purview to accept whomever she believed, she was obliged to disclose her reasons not only to the parties, especially the appellant whose evidence she rejected, but also to the public and the Court of Appeal.

[78] As Rowe P put it in **R v Locksley Carroll** (1990) 27 JLR 259, at page 265:

> "[T]he public...has an equal interest in understanding the result of a trial so that it can have confidence in the trial process. Ultimately the Court of Appeal which has the duty to re-hear the case based on the printed evidence and the judgment of the trial judge wishes to be assisted by the thought processes of the trial judge."

At page 265, Rowe P denounced the practise of judges sitting alone and not providing an accused person with the reasons for rejecting his case. Although the **Carroll** case was a Gun Court one, the learned judge made it plain that "inscrutable silence" is impermissible in all cases in which a judge sits alone. The learned president pointed out that the matter had been dealt in a number of cases, not only in this court but also by the Privy Council. He cited as examples the following Gun Court cases: **R v George Cameron** SCCA No 77/1988, delivered on 30 November 1989; **R v Daniel Dacres** (1980) 33 WIR 241; and **R v Clifford Donaldson and Others** (1988) 25 JLR 274.

[79] Parish judges (then resident magistrates) were not exempt by the learned president in the **Carroll** case from the obligation to provide reasoned decisions in the line up of cases cited as he said, at page 265:

> "In *Leroy Sawyers and Others v. The Queen* [1980] R.M.C.A. 74/80 (unreported), we endeavoured to give some of the practical reasons why a reasoned judgment was necessary. An accused person, we said, was entitled to know what facts were found against him and when there were discrepancies and inconsistencies in the evidence, just how the trial judge resolved them. We did not then refer to the public which has an equal interest in understanding the result of a trial so that it can have confidence in the trial process." (Italics as in original)

[80] Distilled from the views of the learned judges in the authorities cited by Rowe P, it is incumbent on judges sitting alone, including parish judges, to:

(i) demonstrate not only knowledge of the law but his application of it;

(ii) give reasoned decision for coming to his verdict be it guilt or innocence;

(iii) in so doing, he is expected to set out the facts which he finds proved;

(iv) where there is any conflict in the evidence, the method applied in resolving the same; and

(v) explain how he resolved inconsistencies and discrepancies.

[81] In the face of two disparate versions of what transpired, it was especially necessary for the learned magistrate to explain how she arrived at her findings of fact. For example, her finding:

> "that the [appellant] upon being confronted recognised the police officers, and in keeping with this recognition and his knowledge that something illegal and corrupt was being undertaken on his part sought to escape the scene and did".

How did she resolve the conflict in the evidence? What was her reason for accepting the prosecution's version over the appellant's? The parties, more so the appellant, the public and the Court of Appeal are entitled to be apprised of the assistance of her thought process.

[82] In the **Carroll** case, in further explaining the need for reasoned decisions, cited Carey JA's following dicta in **R v Clifford Donaldson and Others**:

> "It is the duty of this Court in its consideration of a summation of a judge sitting in the High Court Division of the Gun Court to determine whether the trial judge has fallen into error either by applying some rule incorrectly or not applying the correct principle.

> If then the judge inscrutably maintains silence as to the principle or principles which he is applying to the facts before him, it becomes difficult if not impossible for the Court to categorise the summation as a reasoned one."

[83] It was entirely the learned magistrate's prerogative to determine in a reasoned way, what she made of that evidence and in her opinion, with whom the truth resided. She was entitled to accept the prosecution's evidence that the appellant was mindful of his wrongdoing and thus he fled to evade capture because he felt his deeds were exposed. However she ought also to have demonstrated that she understood that the purport of the evidence given by the witnesses for the appellant was to support the appellant's case that he reacted the way he did because he felt he was in imminent danger of attack by gunmen.

[84] Simply to accept one version without reasons cannot be acceptable. The appellant and members of the public must never be left with a sense that decisions are merely plucked from a hat. They must be left with a sense that careful consideration was given to all of the evidence, more so, the loser.

[85] Careful scrutiny and weighing of the evidence adduced by the prosecution and the appellant was critical in the light of the divergence in the evidence adduced by the prosecution and the appellant as to whether it was Sergeant Morris or the appellant who first pulled his firearm. The learned magistrate ought also to have demonstrated how she dealt with that issue. The prosecution's witnesses all testified that Sergeant Morris did not alight from the car with his gun drawn, except for Constable Webley who initially said she did not observe if he had anything in his hand when he got out of the car, but later told the court that when both Sergeants Morris and Harding exited the car she did not see them with guns in their hands.

[86] Both Mr Bailey and Ms Rowe corroborated the appellant's version that someone alighted from a green car with a gun. The evidence of neither witness was undermined by cross-examination. The fact that under cross-examination Mr Bailey said he waved his firearm, having said in examination in chief he said the appellant pulled his gun, could not constitute a discrepancy. Under cross-examination it was also Mr Bailey's evidence that Sergeant Morris "pulled out [his gun] after he stepped out of the car". He was however at all times adamant that it was Sergeant Morris who first pulled his firearm.

[87] Mr McKenzie's evidence that blood was on the appellant's face, tended to support the appellant's narrative that in backing away, he collided with a wall, fell and injured himself because he felt he was being attacked by a gunman on seeing Sergeant Morris emerge suddenly from a tinted vehicle with gun in hand. Indeed it was Mr Bailey's evidence that he thought both Sergeant Morris and Constable Harding were criminals and that his life was in danger.

[88] Although Mr Bailey could not speak to whether or not the appellant accepted the money based on the arrangement which was the crux of the matter, as submitted by Mr Champagnie and conceded by Ms Smith, credibility was the important issue. Therefore whether the appellant was indeed injured because he spun around, fell and lost his firearm in the process, would have been helpful in determining credibility.

[89] In respect of the learned magistrate's finding that "the [appellant] met with Mitchell and Dunn and agreed to release the vehicle for a fee of Fifteen Thousand Dollars ($15,000.00)", it was important that she demonstrated that she considered the evidence which was elicited on

behalf of the appellant. She was under a duty to explain how she resolved the appellant's evidence to the contrary.

[90] Whether Messrs Dunn and Mitchell and Constable Webley were seen on Elletson Road Police Station compound in the manner alleged by the prosecution's witnesses was also an important issue which ought to have been resolved as it went to the heart of the prosecution's case which is that the appellant orchestrated a meeting in order to corruptly accept money from Mr Dunn to release the vehicle. The prosecution's witnesses Constables Thomas and Harding, Sergeant Morris, and Sergeant Campbline who were members of the covert operation said they saw the appellant on the compound in the company of, Messrs Dunn and Mitchell and Constable Webley.

[91] Constable Harding said he saw the appellant speaking with them and he saw them enter a vehicle which drove out of the compound. Sergeant Morris saw him talking with them at the Elletson Road Police Station, before they entered a car. Sergeant Campline's evidence was that she was in a vehicle with Sergeants Swaby and Morris which was covertly parked. She saw the appellant walking on the compound of Elletson Road Police Station in the company of Messrs Dunn and Mitchell and Constable Webley and he "appeared to be having a conversation" with Messrs Dunn and Mitchell.

[92] It was Mr Mitchell's evidence that whilst the appellant was on the compound he had a coconut and he enquired if anyone had a knife to cut it. Sergeant Campbline who had the appellant under surveillance however told the court that she did not see the appellant with a coconut at anytime that day. Was that evidence fabricated by Mr Mitchell to bolster his claim

that the appellant was with them on the compound and not in the taxi as the appellant and his witness asserted?

[93] The learned magistrate did express the view that that discrepancy did not go to the root of the charge. At page 117 of the transcript, she said:

> "In general where witnesses for the prosecution disagree it was in minor sequencing details which the court recognizes as not going to the root of the charge and this also included the evidence of Sergeant Sheryl Camblin [sic] the Investigating Officer."

[94] The appellant's case was that he did not meet with nor arrange to meet with Messrs Mitchell and Dunn and Constable Webley at Elletson Road Police Station. Mr Dunn stopped the taxi in which he was travelling on the compound of the Elletson Road Police Station. Mr Dunn was in the company of Mr Mitchell, the driver of the vehicle which was seized and Constable Webley. He said he gave them a ride because he was being nice, and because he knew Mr Dunn's relative from the garage. He caused their journey to end at the intersection of East Queen Street and East Street.

[95] He was supported by Mr Bailey whose evidence was that he went to Elletson Road Police Station in a taxi and picked up the appellant alone and it was while they were in the taxi that the persons approached the appellant. There is no indication that the learned magistrate considered the effect of Mr Bailey's evidence and if she did, why it was rejected in preference to that proffered by the prosecution. By what method did she resolve the conflict? The conflict in the evidence between that of the appellant and that of the prosecution on that issue also required the learned magistrate not only to set out the facts she found proved in that regard, but to provide her reasons for so finding.

[96] Although the learned magistrate was correct in her finding that "[n]o issues as to Dock identification are relevant", her further assertion that "in this case as [the appellant] is not denying as a part of his case his presence on the scene or in the taxi going from Elletson Road to Central Police Station" is erroneous and demonstrates a clear lack of understanding of the appellant's case.

[97] This is demonstrated by the fact that the appellant and his witness, Mr Bailey have specifically denied going to Central Police Station. The appellant's evidence was that:

> "On reaching Downtown area intersection East Queen Street and East Street [he] asked the driver to stop and told them all three this is where [they] are going to leave them. [He] got out of the car to purchase a bottle of water from a vendor on the side walk along East Street. As I was there purchasing the water I heard another vehicle pull up..."

Under cross-examination, he said he had no reason to go to the police station and in answer to a suggestion that he had taken persons to Central Police Station, he responded thus:

> "They could not hence [sic] seen me crossing road. [He] did not take money from anyone."

[98] Mr Bailey's evidence supported the appellant's evidence that the vehicle stopped at the intersection of East Queen Street and East Street where the appellant had asked the driver to stop. Under cross-examination, Mr Bailey categorically denied that they went to Central Police Station. He said:

> "Car never stopped across from Central Police Station."

He also reiterated that they "drove down Elletson Road down East Queen Street and stopped at the intersection with East Street". He sought to make it clear by stating that:

> "Yes a stop light is there, the car did not go over the light.
>
> Central would not be in front of me. We stopped on the left hand side as we go towards parade."

[99] Ms Rowe's evidence was that her stall, at which the appellant stopped to purchase the water, was on East Queen Street.

[100] The learned magistrate's misapprehension of such a critical aspect of the appellant's case led to the erroneous conclusion that the appellant on his case was not denying being in a taxi going from Elletson Road to Central Police Station.

Indeed so divergent is the appellant's case from that of the prosecution's that whereas the prosecution asserted that that he fled down Georges Lane and onto Hanover Street where he escaped into a yard, the appellant said he ran onto and into a shop on East Street.

[101] The learned magistrate's misunderstanding of the appellant's case accounts for her failure to deal with certain critical issues for example: (i) where the incident occurred; (ii) where it is that the appellant fled; and (iii) whether he was in fact seen leaving Central Police Station with Mr Dunn or as Constable Harding said, with Mr Mitchell.

[102] It was, in my view, important for the learned magistrate to have explained the method she employed in resolving those issues in the light of the appellant and his witnesses' evidence that the incident did not occur in front of the Central Police Station as asserted by the

prosecution's witnesses and that he did not walk across the road from Central Police Station with Mr Dunn in the light of the prosecution's case to the contrary.

[103] Constable Harding's evidence was that whilst the car they were in was in front of the Central Police Station, he saw the appellant and Mr Mitchell in front of the entrance to the Central Police Station attempting to cross the road. The appellant, he said, was in front of Mr Mitchell as they walked across the road. The vehicle he was in stopped and allowed them to cross. Sergeant Campbline however told the court that she saw the appellant walking across the road with Mr Dunn. Sergeant Morris however was unable to say whether the appellant was walking with Mr Dunn or Mr Mitchell. The appellant and his witnesses denied that assertion.

[104] The learned magistrate apparently did not think it necessary to consider whether the discrepancy in the evidence between Constable Harding and Sergeant Campbline impacted the credibility of the prosecution witnesses that the appellant was seen leaving Central Police Station and indeed the prosecution's case.

[105] There was also the unresolved and related issue whether the appellant was carrying a black bag and papers in his hand as asserted by the witnesses for the prosecution and denied by the appellant and his witnesses. The significance of that evidence was that it was to bolster the prosecution's contention that the appellant had demanded money because he said he needed $10,000.00 to give someone at Central Police Station to sign some papers.

[106] The learned magistrate in my view did not properly comprehend the appellant's case hence her failure to weigh all the evidence and to resolve the conflicts. In order to conclude

beyond a reasonable doubt that the appellant received money as alleged, the learned magistrate was under a duty to consider all the evidence.

[107] However without a proper analysis of the appellant's case, this does not fortify the prosecution's case. In the examination of the prosecution's case, it could also be found, on Mr Mitchell's evidence that he had been stopped on a previous occasion and on the occasion in question, he had been dealt with harshly by the appellant and this could also have resulted in Mr Mitchell fabricating the complaint. Constable Webley, in her zeal, the appellant having come out the car, could have placed the money on the seat as testified by Mr Bailey. Had the learned magistrate fairly analysed all the evidence, resolved the conflicts, it would have been her inalienable right to accept the evidence which she found to be credible.

[108] Mr Mitchell's evidence was that he was operating contrary to his road licence and he was stopped by the appellant because he was "operating contrary". It was also his evidence that he did not tell the investigator that he was operating contrary to his road licence. It was the prosecution's case that the offence of operating contrary to road licence was an offence for which the vehicle could have been seized.

[109] Sergeant Campbline's evidence was that the invoice from the pound stated that the vehicle was seized for safekeeping. If in fact it was so seized, would it be easier for the appellant to cause the vehicle to be released without the knowledge of his superiors? What was the purport of her evidence? Was it to fortify the prosecution's case that the vehicle was seized in such a manner which would allow the appellant to easily release it? The invoice was

however not tendered into evidence and there is no evidence as to how the witness came by that information.

[110] The learned magistrate's observation that the appellant's attorney did not suggest any reason why the police "should concoct this scheme merely to entrap a colleague in these circumstances" is not without merit. That fact however does not absolve her from examining the appellant's case and providing her reasons for rejecting the same.

The learned magistrate's treatment of Bishop Gaynor's evidence

[112] In dealing with Bishop Gaynor's evidence the learned magistrate said:

> "[A]ll the evidence given by the [appellant] and on his behalf is duly noted. In particular evidence of previous good character given was taken into account and given specific consideration especially with regard to the [appellant's] propensity to commit the offence alleged by the prosecution.
>
> The evidence of Mr. Horace Gaynor, Minister of Religion and Bishop of the Church of Jesus Christ Worship Centre was fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican courts."

[113] The learned magistrate cited Lord Taylor of Gosforth CJ following statement in the English consolidated cases, **R v Vye; R v Wise; R v Stephenson**.:

> "*Having stated the general rule, however we recognise it must be for the trial judge in each case to decide how he tailors his direction to the particular circumstances. He would probably wish to indicate, as is commonly done, that good character cannot amount to a defence. In cases such as that of a long serving employee exemplified above, he may wish to emphasize the 'second limb' direction more than in an average case. By contrast, he may wish in a case such as the murder/manslaughter example given above to stress the very limited help the jury may feel that they can get from the absence of any propensity to violence in the*

> *defendant's history. Provided that the judge indicates to the jury the two respects in which good character may be relevant that is in credibility and propensity, this court will be slow to criticise any qualifying remarks he may make based on the facts of the individual case*." (Italics as in the original)

[114] Although she quoted Lord Taylor's statement and she said she noted "all the evidence given by the [appellant] and on his behalf... [i]n particular evidence of previous good character...specific consideration especially with regard to the [appellant's] propensity to commit the offence alleged by the prosecution", she ignored the stricture of the learned Chief Justice of the need to indicate the effect of good character on credibility.

[115] The learned magistrate merely stating that Mr Gaynor's evidence was "fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican courts" was inadequate. As already stated, it is not enough that the learned magistrate states the law, she must demonstrate that she applied it as there can be no presumption that she did (see **R v George Cameron**).

[116] Brooks JA in **Horace Kirby v R** [2012] JMCA Crim 10, dealt with the law governing good character direction by a judge. He dealt comprehensively with the principles which are relevant to the instant case. At paragraph [10], he said:

> "...a direction concerning the good character of an accused has two limbs, that of credibility and that of propensity. In **R v Aziz** [1995] 3 WLR 53; [1995] 3 All ER 149 their Lordships, in the House of Lords, recognized that fact. Lord Steyn said at page 62:
>
> > 'It has long been recognized that the good character of a defendant is logically relevant to his credibility and to the likelihood that he would commit the offence in question. That seems obvious.'

..."

[117] Brooks JA also referred to the Privy Council decision of **Teeluck and John v The State of Trinidad and Tobago** [2005] 66 WIR 319, in which the Board provided guidance as to the appropriate direction. At paragraph [33], Lord Carswell said:

> "...
>
> (iii) The standard direction should contain two limbs, the credibility direction, that a person of good character is more likely to be truthful than one of bad character, and the propensity direction, that he is less likely to commit a crime, especially one of the nature with which he is charged.
>
> ..."

[118] The significance of Bishop Gaynor's evidence in respect of the appellant's credibility has eluded the learned magistrate. Whereas she mentioned very perfunctorily that she had regard to the evidence of previous good character and that she had given "specific consideration especially with regard to [the appellant's] propensity to commit the offence alleged", there was no mention as to the consideration she gave in respect of his good character on his credibility.

[119] In my view this was a serious omission in the light of the fact that credibility was the critical issue. Her mere utterance that "[t]he evidence of Horace Gaynor...was fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican courts" is woefully inadequate in the light of her failure to deal with the impact, if any, she felt his testimony had on the appellant's credibility, credibility being the prime issue.

[120] That statement could not satisfy the need to demonstrate that she in fact did. It is not sufficient that a magistrate sitting alone merely demonstrate her knowledge of the law, she ought also to have demonstrated that she applied it. This was made plain in the Privy Council case of **R v George Cameron**, and by this court in **R v Clifford Donaldson and Others**. In **R v George Cameron**, Wright JA made it plain, at page 8, that:

> "What is of critical importance here is not so much the judge's knowledge of the law but his application. Even if there is a presumption in his favour regarding the former there is none as to the latter."

[121] The appellant was a policeman of, hitherto, unblemished record. The learned magistrate was obliged to afford him a good character direction. Brooks JA's statement in **Horace Kirby** erases any doubt that the appellant was so entitled. At paragraph [16], he said:

> "It is our view that the authorities have also settled the question as to whether a trial judge has discretion as to whether or not a good character direction ought to be given. The general position is that an accused, who is of good character, is *prima facie* entitled to a good character direction. A definitive statement on the point was given by the Board in **Teeluck**. At paragraph [33], their Lordships' second guiding proposition was outlined:
>
> '(ii) The direction [concerning good character] should be given as a matter of course, **not of discretion**. It will have some value and will therefore be capable of having some effect in every case in which it is appropriate for such a direction to be given: **R v Fulcher** [1995] 2 Cr App R 251, 260. **If it is omitted in such a case it will rarely be possible for an appellate court to say that the giving of a 'good character' direction could not have affected the outcome of the trial: R v Kamar** The Times, 14 May 1999'." (Emphasis as in original)

[122] At paragraph [15], he quoted Lord Steyn's statement, at page 156, in **R v Aziz**, in which the learned judge said:

> "Fairness requires that the judge should direct the jury about good character because it is evidence of probative significance. Leaving it entirely to the discretion of trial judges to decide whether to give directions on good character led to inconsistency and to repeated appeals. **Hence there has been a shift from discretion to rules of practice**." (Emphasis as in the original)

Also, at paragraph [18], Brooks JA stated that the Court of Appeal of England and Wales in **R v Gray** [2004] EWCA Crim 1074; [2004] 2 Cr App R 30, at paragraph [57], said:

> "In our judgment the authorities discussed... entitle us to state the following principles as applicable in this context:
>
> (1) The primary rule is that a person of previous good character must be given a full direction covering both credibility and propensity. Where there are no further facts to complicate the position, such a direction is mandatory and should be unqualified (**Vye**, **Aziz**).
>
> ..." (Emphasis as in original)

[123] Ms Smith referred the court to the following statement of Bingham JA (Ag) (as he then was) in the case of **Horace Willock**. At page 5, Bingham JA (Ag) said:

> "Despite this, however, the absence of reasons or findings in the summation would not necessarily provide a basis for disturbing the verdict of the learned trial judge, who as the tribunal of fact, had the clear distinct advantage of seeing and hearing the witnesses at the trial and of weighing and assessing the demeanour of the witnesses....Provided therefore, that on an examination of the printed record, there existed material evidence upon which there was a sufficient basis for the learned trial judge to come to the decision at which he arrived, there would be no reason for this Court to interfere with the decision at which he arrived."

[124] Should that statement, avail the prosecution in the light of the learned magistrate's:

(a) misunderstanding of a crucial aspect of the case when she said that the appellant's was not "denying as a part of his case his presence on the scene or in a taxi going from Elletson Road to Central Police Station;

(b) failure to resolve crucial issues; and

(c) her omission to give herself the credibility direction?

[125] In light of the unsatisfactory manner in which the learned magistrate dealt with the matter, I am of the view that a retrial of the matter is necessary .

P WILLIAMS JA (AG)

[126] On 4 May 2011, Patrick Williams, the appellant, was convicted in the Corporate Area Resident Magistrate's Court for the offence of corruptly accepting $3,500.00 contrary to section 14(1)(a) of the Corruption Prevention Act. On 18 May 2011, he was sentenced to 12 months imprisonment. At the time, the appellant was a serving member of the Jamaica Constabulary Force (JCF).

[127] Having given verbal notice of appeal at his sentencing, the appellant filed the following grounds of his appeal on 3 June 2011:

"1. The Resident Magistrate erred when she held that the issue of dock identification did not arise in this case.

2. The Resident Magistrate failed to give herself the appropriate warning in relation to the evidence of Patricia Webley, Leonard Thomas and Winston Harding and their identification of the Appellant in the dock.

3. The Resident Magistrate failed to consider the evidence of [the] Appellant's witnesses, namely, Rosemarie Rowe, Balvin McKenzie, Errol Bailey and Bishop Horace Gaynor in coming to her verdict.

4. The Resident Magistrate failed to adequately address the issue of the several inconsistencies in the evidence of the prosecution [sic] witnesses.

5. The sentence of twelve [sic] imprisonment was harsh and excessive having regard to the social inquiry report prepared by the Probation Department in the matter and the Appellant's prior unblemished record in the Jamaica Constabulary Force.

6. The verdict is unreasonable having regard to all the evidence in the case."

[128] When the matter came on for hearing, Mr Peter Champagnie, who appeared on the appeal, abandoned grounds 1, 2, and 4 and sought to rely only on grounds 3, 5 and 6.

The case for the Crown

[129] The Crown called seven witnesses in seeking to prove the allegations against the appellant. Their evidence disclosed that on 18 February 2008 a Toyota Corolla station wagon was being operated as a taxi by Mr Paul Mitchell along the Hagley Park Road in the Half Way Tree Area of Saint Andrew. Mr Mitchell explained that this vehicle was owned by a Miss Green but it was Mr Delroy Dunn who had given him the job to drive the taxi which had a hackney carriage licence and bore red plates with registration number PD 3594.

[130] It was at about 7:00 am that day, as Mr Mitchell was proceeding along Hagley Park Road when he saw some policemen in the vicinity of a gas station. He was carrying four

passengers when the vehicle was licensed to carry only three. Mr Mitchell was also operating the vehicle contrary to the terms of its licence. Being fully aware that he was in breach of the law, he therefore turned off the road in an effort to avoid being stopped by the police officers.

[131] On turning off, however, he noticed a police officer on a police motorcycle approaching him. He was stopped by this officer and instructed to take his papers and driver's licence to this officer. He had seen this officer prior to that day and identified him to be the appellant.

[132] As he walked towards the appellant with the documents, the appellant went to the car, removed the key and rode off on the motorcycle, advising Mr Mitchell that he would soon return. Five minutes later he returned with a wrecker on which the car was placed. Mr Mitchell was advised to attend Elletson Road Police Station, "to go for summons at Traffic Head Quarter[s]".

[133] He accordingly went and waited for the appellant for about two hours. On his arrival, the appellant advised Mr Mitchell that the summons was not yet ready. Mr Mitchell called Mr Dunn to advise him of what was happening. Mr Dunn arrived at the police station about half an hour later and Mr Mitchell pointed out the appellant as the person who had seized the car. At the time of trial, Mr Dunn could not be located to give his account of what had happened.

[134] Mr Mitchell testified that Mr Dunn went to speak to the appellant and he heard Mr Dunn ask the appellant "to do something for him" after reminding the appellant "boss yuh nuh know me long time". The appellant was heard to reply, "yes I can do something but is $20,000", to which Mr Dunn response was that he would pay $15,000.00 as he couldn't find the full amount.

[135] Before leaving the station, Mr Mitchell watched as the appellant and Mr Dunn engaged in further conversation and heard the appellant eventually telling Mr Dunn "I hope you don't fuck me up and come by 2 o'clock". Mr Dunn replied "no man me and you a friend long time".

[136] Upon leaving the police station, Mr Mitchell and Mr Dunn went to the Internal Affairs Division, Kingston Mall, 12 Ocean Boulevard, Kingston. They were interviewed by Sergeant Sheryl Campbline who took them to Detective Superintendent Leon Clunis and told him of the men's report.

[137] Arrangements were then put in motion to effect what the police officers described as a "sting operation". Mr Dunn handed over $3,500.00 consisting of three $1,000.00 notes and one $500.00 note and the notes were marked with the initials "DD". Nine fake $1,000.00 notes were placed under the $3,500.00 and the money was rolled up and wrapped with red and green elastic bands. Constable Patricia Webley was to accompany the two men back to their meeting with the appellant. She was to play the girlfriend of Mr Dunn and the owner of the motor vehicle. The roll of money was given to her.

[138] Some officers were dispatched to Elletson Road Police Station to make observation. Constable Webley, Mr Mitchell and Mr Dunn were then transported in an unmarked service vehicle to the vicinity of Elletson Road Police Station. Mr Dunn made a call on his cell phone and eventually they made their way to a playfield at the station where they were joined by the appellant. He was not in his uniform but in plain clothes at this time.

[139] After introductions were made, they walked to the playfield area and discussed the car. Constable Webley, playing her role, said she was going to sell the car because every day she

had to be fixing something on it and paying money. The appellant told her she would not have to do so as all she would have to do is comply.

[140] Mr Mitchell recalled that there was no money business discussed at that time. He said the appellant had said he "[didn't] love do business with woman". The appellant left them for a few minutes. Upon his return they walked out of the compound in the direction of a motor vehicle which had driven up. The appellant, obviously knew the occupants of the car and after greeting them, he eventually invited Mr Mitchell, Mr Dunn and Constable Webley to join him in the car. The four of them got into the back seat of the car and it drove off in the direction of Central Police Station.

[141] The interaction which had taken place on the playing field was witnessed by other members of the sting operation. Constable Leonard Thomas and Constable Winston Harding had been on the scene prior to the arrival of Mr Mitchell, Mr Dunn and Constable Webley and had seen the appellant go to talk with them. Sergeant Leonard Morris and Sergeant Campbline had arrived there afterwards but had seen the four persons together, in conversation on the playfield. Sergeant Morris saw the appellant with documents in his hand and Sergeant Campbline saw documents in one of the hands of the appellant and a black bag in the other. Sergeant Morris knew the appellant, at the time, for over 15 years. They had once both worked at that police station at Elletson Road. Similarly, Sergeant Campbline had worked with the appellant when both were stationed at the search area at the Norman Manley Airport in 1989.

[142] While being transported in the motor car, Mr Dunn sat closest to the back door behind the driver's seat with Mr Mitchell beside him, with Constable Webley next and the appellant next to her, closest to the door behind the front passenger's seat. The appellant told Mr Dunn to give him $10,000.00 as he had to pay a policeman at Central to sign a paper. Constable Webley took the roll of money, including the marked bills, from her purse and handed it to Mr Dunn who gave it to the appellant. This was the last time that both Mr Mitchell and Constable Webley saw the roll of money.

[143] Upon their arrival at Central Police Station, the motor vehicle stopped across from the station and the appellant and Mr Dunn exited the vehicle, crossed the road and entered the station yard. Constable Webley and Mr Mitchell also exited the vehicle and stood on the sidewalk nearby. Constable Webley called Sergeant Morris and gave him some information.

[144] Sergeant Morris was then with Sergeant Campbline, Constable Harding and Sergeant Swaby travelling in an unmarked police vehicle. All the officers were dressed in plain clothes. Upon receiving the call from Constable Webley, they proceeded to Central Police Station. Constable Harding said that they arrived there just in time to see Mr Dunn and the appellant returning from the station and crossing the road. The vehicle the officers were in stopped to allow the appellant to get across the road. The appellant looked in the direction of the vehicle. Sergeant Morris alighted quickly from the vehicle to approach the appellant. The appellant drew his firearm from the region of his waist and took off running down the street, away from Sergeant Morris.

[145] Sergeant Morris and Constable Harding gave chase. Sergeant Morris called out words to the effect "Willy, Willy, a me". The appellant ran into premises on Georges Lane, came back out onto the road, stopped and placed his firearm in the middle of the road and then ran off again. Sergeant Morris stopped to retrieve the firearm whilst Constable Harding continued to chase the appellant. The appellant ran into some premises along Hanover Street. Constable Harding waited on the arrival of Sergeant Morris but decided it was too risky following the appellant into the premises, so they returned to where the other officers were.

[146] On 20 February 2008, at sometime after 11:00 am, the appellant accompanied by his common-law wife and his attorney-at-law went to the Internal Affairs Division at Ocean Boulevard. Deputy Superintendent Clunis advised the appellant of the allegations against him and arrested him on reasonable suspicion of breaching the Corruption Prevention Act. On 21 February 2008, a question and answer session was conducted with the appellant. Deputy Superintendent Clunis questioned the appellant with Sergeant Campbline doing the recording of the questions asked and the answers given by the appellant.

The case for the defence

[147] The appellant gave evidence on oath in which he told the court that he had been a member of the JCF since joining on 18 October 1981. He had been serving in the rank of sergeant at the traffic division for 15 years.

[148] He was on supervision duty of the police traffic team on the morning of 18 February 2008. They worked in several places in the Corporate Area to include Hagley Park Road in the

Half Way Tree area along Molynes Road. They were on both static and mobile duties. He would ride his police motor cycle along the road and "instruct the men as to what to do".

[149] He saw a white Toyota Corolla motor vehicle along Hagley Park Road picking up and letting off passengers. He stopped the vehicle, approached the driver and asked for the relevant documents for the motor vehicle. The appellant identified Mr Mitchell as the driver.

[150] Having examined the documents, the appellant discovered that the licence related to the taxi did not permit it to be operated in the manner it was in fact being operated. It was a hackney carriage licence which permitted the transporting of passengers from one destination to another as a charter to a set destination. The appellant advised Mr Mitchell that the vehicle would be seized for operating contrary to the terms of his road licence.

[151] The driver was advised to report to the traffic headquarters the following day in the afternoon so he could be given a summons to attend court for the offence. The appellant explained to the court that a section under the Transport Authority Act allowed him to seize the vehicle. He accordingly arranged for a wrecker to have the vehicle towed to a pound. Once this was done, the appellant continued working, went to Half Way Tree area to do further "spot checks" and returned to traffic headquarters at 2:00 pm.

[152] Upon his return there, he met with his team and collected relevant information before dismissing them and then going to his quarters to change. He called a friend he knew only as "Bush" seeking assistance in getting home.

[153] Although the appellant testified that this friend's name was Craig Shaw, it was one Errol Bailey who testified on behalf of the appellant. It was Mr Bailey's evidence that he had

known the appellant for two months prior to the incident. He was at his work place, at about 1:45 pm, on 18 February 2008 when he received a call from the appellant. Mr Bailey left his workplace and went to Elletson Road in a taxi driven by Mr Craig Shaw. At their arrival, the appellant entered the car and sat in the front passenger seat which Mr Bailey had vacated. Mr Bailey sat in the seat immediately behind the appellant.

[154] As the vehicle was about to move off, two men approached the vehicle and one was heard by the appellant to shout, "father Willy, father Willy, I want to talk to [you]". The appellant recognized one of the men as the driver of the car he had seized earlier that day. The other man he knew as "Cutter" but later learnt his name to be Delroy Dunn.

[155] The appellant testified that Mr Dunn asked for a lift and he agreed to give him a lift to the Downtown area. Mr Dunn in turn, invited Mr Mitchell and a female companion into the car as well. As they proceeded Downtown, the appellant testified that Mr Dunn and the lady started "to make advances". Mr Dunn asked him to "release the car". He responded that he was not the person to release the vehicle; it had to be done by a superintendent.

[156] On reaching at the intersection of East Queen Street and East Street, the appellant asked the driver to stop. He then advised the three persons who he had given a lift that "this [was] where we are going to leave them". The appellant exited the car to purchase a bottle of water from a vendor on the sidewalk along East Street.

[157] While making his purchase, the appellant heard another vehicle pull up and observed a green tinted vehicle. Miss Rose-Marie Rowe testified to being the person from whom the appellant was purchasing the bottle of water. She too noticed a green looking car drive up.

[158] The appellant saw the left rear door of the car open suddenly and saw a young man rushed out with a gun pointed in his direction. The appellant felt his life being threatened and immediately reached for his private firearm to defend himself. He drew this firearm and tried to move away from this advancing man armed with a gun. Miss Rowe also testified to seeing a man with a gun come from the car.

[159] Mr Bailey had remained in the car after the appellant and the three passengers they had transported from Elletson Road also exited the car. Mr Bailey testified that he saw the lady with "a rack of thousand dollars folded up". He saw her put it on the seat that Mr Williams had vacated. He said that after seeing the guns in the hands of the men who exited the green car he too became fearful.

[160] The appellant explained, how in backing away from his assailants, he hit "on a wall buck [his] face and part of [his] front chest". He lost his footing and fell down and his gun fell from his hand. Realizing he had lost his defence he ran down East Street.

[161] Mr Bailey saw the appellant backing up and said he saw when the appellant spun around, bounced into a wall and fell, losing his firearm in the process. Mr Bailey eventually exited the car along with Mr Shaw and they both took off running away from the scene. He said upon their return, he saw the same lady he had given the lift standing by the green car laughing.

[162] Miss Rowe also testified to seeing the appellant fall. She said however, he stepped on her foot, bounced into her side and then fell to the ground. She too eventually ran from the scene.

[163] The appellant testified that he ran to a wood work shop along East Street where he saw some men working and explained to them that he was being attacked by gunmen. One of the men closed the shutter of the shop. He remained in the shop for over two hours. He was unable to make any phone calls for assistance as his phone had also fallen from him when he fell. Eventually, he left the shop accompanied by one of the men in the shop and went to City Centre Police Station. He tried to make a report but the man on duty refused to take his report.

[164] Mr Balvin McKenzie testified that he was the operator of the business at 53 East Street which the appellant had entered and made his report of being attacked. Mr McKenzie said he did close the shutter and after a while when he was asked to look out, he advised the appellant it was clear. The appellant asked him to follow him to the police station.

[165] The appellant gave evidence of injuries he had received to his mouth as a result of hitting the wall. Mr McKenzie explained that the sight of blood on the appellant's face caused him to "feel sorry for" the appellant, prompting him to be of assistance. The court visited and made observation of area where the workshop of Mr McKenzie was located at 53 East Street.

[166] The appellant, Mr Bailey and Miss Rowe all denied that the incident took place in the vicinity of Central Police Station. It was agreed by Mr Bailey and the appellant that the route through Downtown may not have been the easiest to get to Portmore where the appellant lived. The appellant denied making any arrangement to get any money from anyone to facilitate the release of the motor vehicle which he maintained had been legitimately seized. He also denied receiving any money from any one pursuant to any arrangement.

The submissions

Grounds 3 and 6

The Resident Magistrate failed to consider the evidence of the appellant's witnesses, namely Rosemarie Rowe, Balvin McKenzie, Errol Bailey and Bishop Horace Gaynor in coming to her verdict.

The verdict is unreasonable having regard to all the evidence in the case.

[167] Mr Champagnie submitted that the Resident Magistrate, in her review of the evidence, showed scant regard to the evidence of the appellant's witnesses. She had stated the following:

> "Witnesses Rowe, McKenzie and Bailey's evidence were also noted and reviewed in detail when the court came to make a decision. They did not in the court's opinion go to the root issue to be decided by the court which was whether [the appellant] had taken the money based on the arrangement. The evidence of Horace Gaynor will be looked at separately.
>
> The [appellant] has no obligation to put up a defence but where this is done it should be considered carefully. This was done by this court and all the evidence given by the [appellant] and on his behalf is duly noted. In particular evidence of previous good character given was taken into account and given specific consideration especially with regard to the [appellant's] propensity to commit the offence alleged by the prosecution.
>
> The evidence of Mr Horace Gaynor, Minister of Religion and Bishop of the Church of Jesus Christ Worship Centre was fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican courts."

[168] Mr Champagnie complaint was that when she reviewed the evidence, the Resident Magistrate in considering the evidence for the prosecution went into some amount of detail in repeating what some of the prosecution's witnesses had said. For other witnesses she noted specifically what the substance of their evidence was. However, he noted the evidence of the

appellant's witnesses did not get the same careful treatment and there was a clear paucity in her consideration of the appellant's case.

[169] Mr Champagnie, in his usual succinct manner, submitted that the Resident Magistrate's failure to appreciate the appellant's case was clearly seen in her wrongly concluding that the root issue to be decided was whether the appellant had taken the money based on the arrangement. He submitted that the real issue was that of credibility.

[170] Mr Champagnie noted that the Resident Magistrate did not state any reason why she rejected the evidence given by the witnesses for the appellant. She stated that she believed that the prosecution witnesses were witnesses of truth but failed to expressly state why she did not find the appellant's witnesses believable. Mr Champagnie submitted further that this suggested that she did not weigh the evidence in a fair way and did not do any assessment in arriving at her verdict.

[171] He went on to consider directly the evidence of Bishop Horace Gaynor, which he noted was about the good character of the appellant. Mr Champagnie submitted that the good character directions were therefore not sufficient as it did not address the issue of credibility.

[172] In her response on behalf of the Crown, Miss Smith agreed that the main issue in this case was that of credibility. However, she submitted that the learned Resident Magistrate as the fact finder was well within her right to reject the evidence of the appellant and his witnesses.

[173] It was Miss Smith's submission that the learned Resident Magistrate had reminded herself that there was no burden on the appellant to establish his innocence, and then had

gone on to indicate that "all the evidence given by the [appellant] and on his behalf is duly noted". This, in Miss Smith's opinion, was sufficient.

[174] Miss Smith conceded that the view by the learned Resident Magistrate that the evidence given by the appellant's witnesses did not "go to the root issue to be decided by the court" may not have been an accurate assessment of the significance of Mr Errol Bailey's evidence. She noted that Mr Bailey's evidence sought to support the appellant's assertions that he had not received money from Mr Dunn whilst in the taxi. She however submitted that the learned Resident Magistrate acceptance of the prosecution's witnesses as truthful can only mean, having assessed the testimony of Mr Bailey and the other witnesses called by the appellant, she rejected the case for the appellant, as she was entitled as the tribunal of fact so to do.

[175] Miss Smith referred us to a previous decision of this court in **R v Horace Willock** SCCA No 76/1986, judgment delivered on 15 May 1987, where Bingham JA (Ag) (as he then was) stated, at page 5:

> "Despite this, however, the absence of reasons or findings in the summation would not necessarily provide a basis for disturbing the verdict of the learned trial judge, who as the tribunal of fact, had the clear and distinct advantage of seeing and hearing the witnesses at the trial and of weighing and assessing the demeanour of the witnesses. …Provided therefore, that on an examination of the printed record, there existed material evidence upon which there was a sufficient basis for the learned trial judge to come to the decision at which he arrived, there would be no reason for this Court to interfere with the decision at which he arrived."

Ground 5

The sentence of 12 months imprisonment - was harsh and excessive having regard to the social inquiry report prepared by the Probation Department in the matter and the appellant's prior unblemished record in the Jamaica Constabulary Force.

[176] Mr Champagnie submitted that given the state of the appellant's health, 12 months imprisonment was harsh and excessive. He noted that the information obtained through the Social Enquiry Report was that the appellant had been a heart patient for the previous seven years at the Outpatient Department of the Kingston Public Hospital having suffered a heart attack seven years prior. The appellant also reportedly suffers from high blood pressure.

[177] Mr Champagnie complained that it could not be seen that the Resident Magistrate took this factor into consideration when she imposed the term of imprisonment on the appellant. The fact that she had given no reasons for the sentence imposed left it uncertain as to what, if any, impact the state of the appellant's health had on the Resident Magistrate's exercise of her discretion in choosing the appropriate sentence.

Discussion and Analysis

[178] The nature of the complaint made by Mr Champagnie, about the manner in which the learned Resident Magistrate treated the evidence of the witnesses for the appellant, requires an overview of her summation. The learned Resident Magistrate commenced her reasons for judgment with a review of the evidence. She did in fact review the evidence of Mr Paul Mitchell and Constable Patricia Webley in greater detail, but she identified all the other witnesses separately and commented on their evidence.

[179] She rehearsed the evidence of Mr Mitchell concerning the seizure of the car and also his getting Mr Dunn to meet with him at Elletson Road Police Station to speak with the appellant with a view to having the car released. She considered the evidence given about the sting operation, thus reviewing Mr Mitchell's and Constable Webley's evidence in greater detail and then commenting that Constable Leonard Thomas, Constable Winston Harding, Detective Sergeant Leonard Morris testified about the sting operation and found that their evidence was largely consistent in all material particulars.

[180] The learned Resident Magistrate indicated the significance of the credibility of the witnesses especially in relation to what occurred in the motor car and the sting operation. She stated in relation to Constable Webley's evidence:

> "What struck the court in particular about this witness was that there was no reason for the officers at internal affairs given or suggested by the attorney for the [appellant] why the police should concoct this scheme merely to entrap a colleague in these circumstances."

[181] The learned Resident Magistrate was also very brief when she considered the evidence of Deputy Superintendent Clunis, where she simply stated:

> "**DSP Clunis** also gave evidence and in the major particulars supported the other witnesses and in general the prosecution's case remained intact." (Emphasis and underline as in original)

[182] She failed to demonstrably review the evidence of the Sergeant Campbline, the investigation officer, and commented on it in the following statement:

> "In general where witnesses for the prosecution disagree it was in minor sequencing details which the court recognizes as not going to the root of the charge and this also included the evidence of Sergeant Sheryl Campblin[e] the Investigating Officer."

[183] The learned Resident Magistrate then turned her attention to the case for the appellant. She quite properly identified the important issues for resolution in this statement, which aptly captures the essential factors on the appellant's case:

> "The [appellant] gave evidence in this matter and the court noted carefully his account of the incident stating clearly that he made no arrangement and collected no money and the factors operating on his mind while he acted during the course of the incident. His demeanor in the witness box was especially noted and in particular his assertion that he knew of no force order which prevented him travelling in the way he did with a person he had prosecuted. This last comment was note worthy [sic] for the court as the concept of good moral judgment in those circumstances seemed either lost on the [appellant] or totally ignored."

[184] The learned Resident Magistrate then went on to make the statement complained of by Mr Champagnie at paragraph [167] herein. It is however clear that the treatment of the witnesses for the defence was similar, in large measure, with most of the witnesses for the prosecution. The learned Resident Magistrate adopted the approach of stating that the evidence of certain witnesses was duly noted or merely stating succinctly what she considered to be the most important feature of the testimony.

[185] It is significant that she demonstrated clearly what is most important in criminal matters, such as this, when she stated:

> "The [appellant] has no obligation to put up a defence but where this is done it should be considered carefully. This was done by this court and all the evidence given by the [appellant] and on his behalf is duly noted."

[186] There are several decisions from this court where the matter of what ought to be contained in the findings of a judge sitting alone was considered. In **Lowell Forbes v R** [2010] JMCA Crim 81, McIntosh JA had this to say on the matter at paragraph [29]:

> "The learned Resident Magistrate had no duty to set out in great detail her every thought on the issue. The authorities make that clear. Her duty to provide reasons for the decision is discharged if she demonstrates in her examination of the evidence pertaining to the issues that she had all necessary considerations in mind (see **Regina v Alex Simpson**; **Regina v McKenzie Powell** (SCCA Nos 151/88 & 71/89 a decision delivered on 5 February 1992)."

[187] In this matter, the learned Resident Magistrate demonstrated an awareness of what was required of her in her findings by referring to the dicta of Carey P (Ag) (as he then was) in **R v Lloyd Chuck** (1991) 28 JLR 422. She indicated that, she found it to be "very demonstrative and of great assistance". She noted, he stated (at page 432):

> "Our firm conclusion is that a Resident Magistrate satisfies [the] provisions of Section 291 by recording in summary form, findings of fact which go to prove the guilt of the accused. Where there is conflicting evidence between Crown witness[es], he should state whose evidence he accepts [and whose he] rejects. In that case, [it is expected that] some reason[s] or explanation for the choice will be shortly stated. If a conclusion is derived from inferences, then the primary facts from which the [inference or] inferences are drawn should be stated."

[188] It was clearly with this in mind that the learned Resident Magistrate then gave her findings of fact adhering to the guidance she had acknowledged in the dicta. She expressly stated that she believed the prosecution's witnesses to be witnesses of truth and found from their evidence, facts which led her to conclude that the appellant was guilty. The facts she found could only have been arrived at if she rejected the evidence as presented by the appellant.

[189] The main issues which the learned Resident Magistrate had to resolve were issues of fact which concerned her determination of the credibility of the witnesses given the diametrically opposed versions which were presented. There was no dispute as to the circumstances of the seizure of the motor vehicle and there was agreement that all the parties concerned had travelled together from Elletson Road. It was therefore left to the learned Resident Magistrate to decide whether there was an arrangement and more importantly whether the appellant accepted monies as an inducement to himself or another person for doing any act in the performance of his public duties.

[190] It is true that the learned Resident Magistrate did not demonstrate specifically why she rejected the evidence of the appellant and his witnesses. She also failed to expressly state that having rejected the case for the appellant she returned to the Crown's case as she was obliged to do. The question is however whether these failures affect the conviction.

[191] There was ample evidence from which the learned Resident Magistrate, as the tribunal of fact, could conclude that the prosecution's witnesses were witnesses of truth. Although she could have given more details in her findings, it cannot be said that she did not consider all

the material before her from the prosecution and the appellant and she did so in a manner that could best be described as economical. She saw and heard the witnesses. It was for her to make a determination as to whom she believed.

[192] The fact that she did in some fashion juxtapose the cases presented and accepted that of the prosecution is seen, in particular, in the following finding she made:

> "5. The court specifically rejects as implausible any evidence that Constable Webley or any of [the] other parties [sic] placed the money on the seat of the motor vehicle as this was not in keeping with the stated objective of the sting operations and Miss Webley's presence in the car."

[193] It is a well established principle that this court will not interfere with a guilty verdict where questions of fact are involved unless it is shown that the judge is palpably wrong. In a decision of this court, **Everett Rodney v R** [2013] JMCA Crim 1, Brooks JA had this to say, at paragraphs [21] and [22]:

> "[21] Where findings of fact are made by the tribunal entrusted with that duty, this court is reluctant to disturb such findings, as long as there is credible evidence to support such a finding. The approach was enunciated by Smith JA in **Royes v Campbell and Another** No SCCA 133/2002 (delivered 3 November 2005). His Lordship said at page 18 of his judgment:
>
> > 'It is now an established principle that in cases in which the Court is asked to reverse a judge's findings of fact, which depend upon his view of the credibility of the witnesses, the Court will only do so if satisfied that the judge was 'plainly wrong.'
>
> Smith JA relied on **Watt v Thomas** [1947] AC 484 in support of that statement of the law. That principle would also apply to Resident Magistrates who make findings of fact.

> [22] This court has also found that an appellant, seeking to overturn a conviction based on findings of fact, must 'show that the verdict is so against the weight of the evidence as to be unreasonable and insupportable' (see **Joseph Lao v R** (1973) 12 JLR 1238). This principle also applies to a Resident Magistrate's findings of fact." (Emphasis as in original)

[194] The learned Resident Magistrate said she gave the case for the appellant careful consideration and noted the evidence which was given. Her failure to delineate the evidence does not mean she had also failed in her obligation to ensure ultimately that the appellant received a fair trial. There was ample evidence before the learned Resident Magistrate for her to make the findings that she did. There was notably a significant degree of consistency between the witnesses for the prosecution. There was also sufficient demonstration by the learned Resident Magistrate of her awareness of the principles that should guide her decision. Her failures do not amount to a miscarriage of justice such that the conviction should be interfered with.

[195] The complaint of the treatment of the evidence of Bishop Gaynor raises the issue of the adequacy of the good character direction. This witness testified that he knew the appellant "for all his life"; the appellant was a member of Jesus Christ Worship Centre, although no longer attending church. He said he knew the appellant to be someone "who is willing to give rather than to take from someone", "very honest straight forward individual, never know him to be in any shady dealings or anything dishonest".

[196] The learned Resident Magistrate demonstrated a clear appreciation of the significance of this evidence and she acknowledged that it was considered "fully and completely taken into account especially in light of the considerations in this regard adopted by the Jamaican

courts". She correctly recognized the principle applicable to the good character direction as stated in the iconic case of **R v Vye; R v Wise; R v Stephenson** [1993] 3 All ER 241 and quoted the comment of Lord Taylor of Gosforth CJ, at page 247 b, which culminated with the following:

> "Provided that the judge indicates to the jury the two respects in which good character may be relevant, ie credibility and propensity, this court will be slow to criticise any qualifying remarks he may make based on the facts of the individual case."

[197] The learned Chief Justice had, earlier at page 245, after considering the historical background to the judge's direction in regard to good character and reviewing the case of **R v Berrada** (1989) 91 Cr App R 131, said:

> "That decision, therefore, confirmed that, whatever the position may have been previously, it is now an established principle that where the defendant of good character has given evidence, it is no longer sufficient for the judge to comment in general terms. He is required to direct the jury about the relevance of good character to the credibility of the defendant. Conventionally this has come to be described as the 'first limb' of a character direction. The passage quoted also stated that the judge was entitled, but not obliged, to refer to the possible relevance of good character to the question whether the defendant was likely to have behaved as alleged by the Crown. That (in effect the *Stannard* direction) is the 'second limb'."

[198] In the instant case, the learned Resident Magistrate limited her application of the direction to the second limb when she stated:

> "In particular evidence of previous good character given was taken into account and given specific consideration especially with regard to the [appellant's] propensity to commit the offence alleged by the prosecution."

[199] There can be no dispute that the appellant, having given sworn evidence and this being a case in which his credibility was in issue, was entitled to the benefit of the direction that impacted directly on whether he is more likely to be truthful being of good character. The learned Resident Magistrate having clearly failed to expressly warn herself on this limb means that the question must arise as to the consequence of her not doing so in the particular circumstances of this case.

[200] In a decision from this court **Chris Brooks v R** [2012] JMCA Crim 5 , Morrison JA (as he then was) considered a similar question and after reviewing the authorities concluded at paragraph [57]:

> "The test is therefore whether, having regard to the nature of and the issues in the case and taking into account the other available evidence, a reasonable jury, properly directed, would inevitably have arrived at verdict of guilty."

[201] In all the circumstances of the instant case, the quality and cogency of the evidence given and the significant degree of consistency between the witnesses was such that it outweighed any potential benefit of a full good character direction. The learned Resident Magistrate would inevitably have convicted the appellant. In the circumstances, there is no merit in Mr Champagnie's submissions and the grounds must fail.

The Sentence

[202] No reason was given in the reasons for judgment to indicate why the learned Resident Magistrate considered a custodial sentence appropriate in this case. There is no question that the offence for which the appellant was convicted is a serious one. It involved a level of

dishonesty which is not to be accepted from police officers and especially from this appellant, given his rank in the JCF. There is a recognition that a clear message needs to be sent to act as a deterrent for officers who may be tempted to engage in this form of dishonesty.

[203] The information in the Social Enquiry Report seemed to have come from the appellant himself. There was no independent medical evidence to support his assertion as to the state of his heath and he was well enough to have remained on the job after suffering a heart attack. The learned Resident Magistrate would be at liberty to impose a custodial sentence as whatever medical attention he would need could be accessible through the correctional services.

[204] In the circumstances, the sentence imposed cannot be viewed as manifestly excessive or harsh.

[205] The appeal therefore should be dismissed. The conviction and sentence should be affirmed with the sentence to commence forthwith.

BROOKS JA

ORDER

By majority (Sinclair-Haynes JA dissenting)

The appeal is dismissed. The conviction and sentence are affirmed with the sentence to commence forthwith.