see now Jones v Ricketts 136

JAMAICA

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL NO.

CHARLES MORRISON - Plaintiff/Respondent

vs.

DENNIS PALMER - Defendant/Appellant

Mr. R.M. Millingen for Defendant/Appellant

Mr. D. McFarlane for Mr. R.N. Henriques for Plaintiff/Respondent

Mr. Justice Lewis:

This is an appeal from the judgment of the Resident Magistrate for the Parish of St. James in which he awarded £100 . 0. 0. damages in an action for assault and battery and wrongful imprisonment. The appellant is a police Constable, the respondent is the son of a retired Constable.

The incident which gave rise to this case occurred in St. James Street in the town of Montego Bay near its intersection with Creek Street and South Street. The respondent's case was that on turning from Creek Street into St. James Street he thought that the Constable on point duty had spoken to him and he accordingly drew up to the left side of St. James Street near to the corner, stopped his car and put his head out through the window to listen to what the Constable had to say. When he realised that the Constable did not require him to stop he made to move off but had to allow cars coming from behind him to pass by.

The third of these cars was driven by the appellant who he says passed him without speaking, drew over to the left of the road a little ahead of him, parked his car, and as he the respondent me off, got out of his car and signalled to him to stop. The appe was not in uniform but nothing turns on this as the respondent a. hat they were known to each other. The respondent says that on

receiving the signal he again pulled into the left near to the sidewalk and stopped, and that the appellant came up to his car, ordered him out, and on his failure to come out pulled him out. He says that his shoes dropped off and the appellant dragged him barefooted along St. James St. to the Police Station refusing to say why he was doing this. There the appellant ordered the Station Guard to lock him up, to charge him with dangerous driving, and to grant no bail. He was detained at the Police Station in the cell for about 2½ hours and then released on bail. He was subsequently brought before the Magistrate on charges of obstruction and dangerous driving under the Road Traffic Law Cap.346 and both charges were dismissed.

The appellant's account of the incident was that as he entered St. James Street from Barnett Street he saw the respondent's car in St. James Street at the corner of Creek Street and St. James Street. When the Constable on point duty gave the respondent a signal to proceed he went forward and then stopped again in such a position as to block a portion of South Street, while he the respondent spoke with a young man on the opposite side of St. James Street. He says that he had to stop his car behind the respondent's in order to allow cars moving in an opposite direction to pass and that thereafter while passing the respondent he told him that he was blocking traffic and could not stop there; that the respondent gave him a rude answer and that as the respondent did not move on after he passed him, he stopped his car and came out and started to walk to the respondent's car; that the respondent then moved off and he signalled him to stop, whereupon that the respondent drove his car up to him, causing him to jump out of the road in order to avoid being run down. He further says that he slipped and held on to the door of the respondent's car as it stopped. He then told the respondent that he was a Police Constable and was arresting him for dangerous driving and that as he the respondent declined to leave the car he took him out and took him to the Police Station.

He denies that the respondent's shoes fell off or that he dragged him barefooted through the street or that he told the Station Guard not to bail him. He also says that he did not know the respondent's name or address and did not enquire but that on reaching the Police Station he learnt from the respondent that he was the son of his old colleague Norman Palmer.

The respondent's story was substantially supported by the evidence of his father who was with him in the car at the time and a special constable, Bowen, who was on the scene at the time. Bowen stated that after the appellant signalled the respondent to stop he saw the respondent's car swing over towards the sidewalk in the direction of the appellant and that the appellant jumped away, and that this happened "to my feelings because he stop it". The appellant he stated said nothing at the time of the arrest. The respondent called one witness but as will be seen hereafter he did not derive much support from him.

The case was heard on the 8th December, 1960. The learned Resident Magistrate reserved his judgment and did not deliver it until 22nd. June, 1962. The Court has been informed that in the meantime he had been transferred from the parish of St. James and had to be re- appointed specially for the purpose of enabling him to deliver the judgment. In his judgment, he accepted the account of the respondent and rejected that of the appellant and his witness both of whom he found to be untruthful. He held that there was no reasonable and probable cause for the arrest which was unlawful and that there was malice.

The undue delay in delivery of the judgment has naturally been made a ground of appeal, the ground being that the learned Resident Magistrate thereby rendered himself incapable of giving an accurate and reasonable judgment. At the commencement of the hearing of the appeal this Court expressed its grave disapproval of this long delay for which no satisfactory reason has been given. The Court cannot stress too strongly or too often the great importance it attaches to the prompt delivery of judgments.

Resident Magistrates' Courts try by far the large majority of cases in this country and Magistrates share a considerable responsibility for the smooth and expeditious administration of justice. Undue delay in delivery of judgments not only creates hardships upon the parties and tends to the denial of justice but is m also likely to undermine public confidence in the proper administration of justice. I agree with what Furness, C.J. said in Mair vs. Jamaica Utilities Ltd. (1941) 4 J.L.R. 7 - a case in which there was a delay of 19 months in delivering judgment:

> " After lapses of time such as I have referred to, it is likely that there may remain in the Resident Magistrate's mind no distinct recollection of incidents at a trial and the many details which help a judge to estimate the credibility of witnesses. In a large measure he may end in trying a case on paper and, for practical purposes, become no more a seeing and hearing Court than this Court. We are aware that at times there are circumstances which make it extremely difficult for a Resident Magistrate to deliver a reserved judgment without some delay or prepare his reasons for judgment after notice of appeal without some delay, but at whatever inconveniences and though it may entail the postponement of other trials, reserved judgments should be delivered and reasons for judgment should be written while cases are still fresh in a Resident Magistrate's mind. Delay such as the delay which has occurred in this case may result in a denial of justice to the parties."

This Court has given anxious consideration to the question whether this delay had the effect of rendering the trial so unsatisfactory that it ought to have sent the case back for a new trial, but upon consideration of the judgment and of the arguments submitted on this appeal has come to the conclusion that this course is not necessary. The Court has however reviewed the evidence for itself and formed its own conclusions taking the view that the learned Magistrate by his long delay deprived himself of the advantage which he had of seeing and hearing the witnesses.

The main ground of appeal brought forward by Mr. Millingen was that the learned Resident Magistrate applied the wrong legal principles to the determination of the case. He contended that the Resident Magistrate though holding that there was in law no obstruction and no dangerous driving, also found that there was an obstruction and a danger to the appellant. On this latter finding, he submitted, the Resident Magistrate ought to have held

that there was reasonable and probable cause for the arrest. In support of his submission he referred to the definition of "reasonable and probable cause" by Hawkins J. in Hicks vs. Faulkner (1878) 8 Q.B.D. 167 at p. 171 -

> "An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary, prudent and cautious man, placed in the position of the user, to the conclusion that the person charged was probably guilty of the crime imputed."

This definition was approved by the House of Lords in Herniman v. Smith (1938) A.C. 305. Counsel's submission is based upon his interpretation of Para 21 of the Resident' Magistrate's judgment, in which he gives his findings as follows:

1) that the evidence does not disclose the offences of obstruction or dangerous driving;
2) that the arrest was unlawful, and that there wasan assualt;
3) absence of reasonable or probable cause and the circumstances from thechvidence of defendant is such that malice can be easily inferred, he having injected his personality in the issues, for to him was the obstruction and to him the danger;
4) the defendant and his witness are not witnesses of truth, whereas I find the plaintiff and his witness, witnesses of truth.

In my view the learned Resident Magistrate's reference in finding (3) above to obstruction and danger relate to the appellant's evidence that he had to stop his car behind that of the respondent to permit cars going in the opposite direction to pass; and that the respondent when stopped so manoeuvred his car as to endanger the appellant's life. But the Resident Magistrate found that the appellant was not a witness of truth and in view of his finding in para. 1 clearly did not accept the appellant's evidence on these points. It is however necessary for the purpose of this appeal to consider whether his decision that there was an absence of reasonable

and probable cause can be supported.

In so far as obstruction was concerned the slightest enquiry by the appellant as to why the respondent had stopped would ha[ve] have enabled him to form a reasonable conclusion as to whether his stopping might constitute an obstruction; but he made none. His evidence that he had to stop behind respondent's car, as also that the appellant was speaking to a young man across the street, was denied by the respondent and by his father, and was not supported by his own witness Jennings. The preponderance of the evidence is certainly in favour of the respondent's account and against the conclusion that the appellant could on reasonable grounds have believed that the respondent's user of the road was unreasonable and thus an obstruction. Nor indeed, did the appellant purport to arrest the respondent for obstruction.

As to dangerous driving it is admitted by the respondent and his father that at the Police Station the appellant told the police guard to charge the respondent with dangerous driving. It is also admitted by the respondent's witness, Bowen, that the appellant had to jump out of the way to avoid respondent's car. But did this happen in such circumstances as to give the appellant reasonable gounds for believing that the respondent might be guilty of dangerous driving. The respondent and his two witnesses say that as soon as the appellant gave the signal to stop the respondent pulled to the side of the street and stopped. The appellant says that the respondent drove out from the sidewalk as though he would not stop, then subsequently manoeuvred his car back towards the side walk at him - thus he alleges a deliberate manoeuvre to endanger him. His witness Jennings says that when the appellant gave the signal the respondent did not stop but "rushed down car" on the appellant. The improbability of the truth of this story is exposed by the inconsistency of the appellant and his witness as to the distance which the appellant's car travelled before stopping. The appellant sayd that he parked 1½ chains ahead of the respondent, and according to his account

the respondent must have travelled some 80 feet towards him; but Jennings says that the appellant parked about 15 or 16 feet from the respondent's car and that the respondent's car, when stopped, stopped about 12 to 13 feet from the appellant's car so that according to Jennings he had only travelled about 4 feet before reaching the appellant. This second account is more consistent with the evidence of the respondent's father who said that the respondent's car was already moving when the appellant stopped his car about ½ chain ahead, came out of it, walked towards the respondent and signalled to him to stop, thus the respondent's car was already quite close to the appellant when the appellant gave the stop signal; and one can appreciate the witness Bowen's statement that it seemed that the car would knock him down if he did not jump away "because he stop it". It is clear that no danger to the appellant resulted from the respondent's conduct but from the appellant's own incautious act in stopping the car when it was already too close to him. Had the appellant acted less hastily, he would have appreciated this, but already angered by what he considered to be a rude remark by the respondent he rushed at him, pulled him out of the car and dragged him to the Police Station. I think that the learned Resident Magistrate's conclusions that the appellant was not a witness of truth can be supported by the evidence and that he was right in holding that there was no reasonable and probable cause for the arrest. I agree with him that the appellant's behaviour in the circumstances abovementioned, indicate that he interjected his personality in such a way as to prevent him from making a reasonable and unbiassed assessment of the facts of which he was aware.

In my judgment this is sufficient to dispose of this appeal. There is, however, another aspect of the case to which I would refer briefly. Mr. Henriques for the respondent

submitted that even, if the appellant's story were accepted as true in its entirety he would nevertheless not be entitled to judgment, for two reasons, viz:

(a) it was not sufficient for the appellant to tell the respondent that he was arresting him for dangerous driving: he ought to have told him the act in respect of which he was being arrested;

(b) the appellant in arresting the respondent had not complied with the conditions of s. 31 (2) of the Road Traffic Law, which, he submitted, authorised a constable to arrest for dangerous driving only in cases where, the offence being committed in his view, he was unable to obtain the driver's name and address or to examine his driver's licence. In the instant case it was admitted that the appellant did not ask the respondent either for his name and address or to produce his license.

In support of proposition (a) counsel cited Christie v. Leachinsky (1947) A.C. 573. In that case it was held that apart from special circumstances, an arrest without warrant can be justified only if it is an arrest on a charge made known to the person arrested. Lord Simonds explained that it was not necessary that the constable should at the time of arrest formulate a charge, but that an arrested man is entitled to be told what is the act for which he is arrested - he is entitled to know what are the facts alleged to constitute crime on his part. The "charge" ultimately made will depend on the view taken by the law of his act.

I do not agree that if the appellant's story were accepted as true the facts alleged by him would not be sufficient

to comply with the rule stated in Christie v. Leachinsky (supra). For if the appellant, immediately after the respondent manoeuvred his car at him so as to run him down (as he alleges), told the respondent that he was arresting him on a charge of dangerous driving, the appellant could not but be aware of the facts or act to which the charges related.

The learned Resident Magistrate however found as a fact that the appellant did not tell the respondent why he was arresting him. This finding has not been challenged by the appellant and is amply supported by the evidence. That being so, the arrest cannot be justified.

With respect to Mr. Henriques' other submission, on s. 31(2) of the Road Traffic Law, I do not think the matter was sufficiently argued and would prefer to reserve my opinion.

It was further argued for the appellant that the damages awarded were excessive. I do not think there is any merit in this submission.

For these reasons I would dismiss the appeal with costs

Judge of Appeal

I agree .....
President (Ag.)

I agree .....
Judge of Appeal