JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 84/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. v. CHRISTOPHER THOMPSON

Maurice Saunders for Appellant

Mrs. Lorna Errar-Gayle for Crown

January 17 & February 26, 1990

ROWE, P.:

Irene Nicholson was severely injured on the night of August 5, 1986. Two men, Everton Christie and the appellant were singularly charged for wounding Nicholson. Both informations were sworn to on August 19, 1986. Christie came on for trial on January 20, 1987. Nicholson was in the process of giving evidence-in-chief in support of the prosecution's case, when the prosecutor decided "to offer no further evidence" and Christie was dismissed. The appellant was arrested in July 1987 in respect of the information sworn to on August 19, 1986 and he was eventually convicted on June 2, 1988 and given a twelve month sentence suspended for two years.

Trial of the appellant commenced on April 26, 1988 and was continued on May 19, 1988. On that day the Crown called two witnesses then closed its case. A no-case submission on behalf of the appellant was rejected. Then the appellant gave sworn evidence, and called two defence witnesses. Again

the trial was adjourned and the new trial date of June 2, 1988 was fixed. The appellant was remanded in custody. When the trial resumed on June 2, Counsel for the appellant applied to the Court to disqualify itself on the basis that the same Resident Magistrate who heard the evidence in Everton Christie's case was now trying the appellant and consequently he was not fit or qualified to act as a judge of fact and of law in the appellant's case. The Resident Magistrate refused to disqualify himself and went on to convict the appellant. In his findings of fact he recorded:

> "Court did not accept breached rules of natural justice. Recalled prosecution offering no further evidence in case against Christie before completion of her examination-in-chief."

Mr. Saunders' first ground of appeal was well summarised in the second paragraph of Supplementary Ground 1, when he complained that:

> "The learned Resident Magistrate was in breach of the principles of natural justice particularly, the rule against bias, and that he failed to apply the proper test of bias, to wit, whether there was an appearance of bias and not whether there was actual bias so that justice should not only be done, but should manifestly be seen to be done."

In support of this ground he argued that the Resident Magistrate held two separate trials based on the same facts and in so doing there was an appearance of bias.

The test of bias has steadily developed since The King v. Sussex Justices ex parte McCarthy (1924) 1 K.B. 256. In Regina v. Altrincham Justices Ex parte Pennington (1975) 1 Q.B. 549 Lord Widgery C.J. stated the test of bias in this way:

> "When an application is made to set aside a decision on the ground of bias, it is of course not necessary to prove that the judicial officer in question was biased. It is enough to show that there is a real likelihood of bias, or at all events that a reasonable person advised of the circumstances might reasonably suspect that the judicial officer was incapable of producing the impartiality and detachment [which the judicial function requires]"

Other equally illuminating statements of the law on bias can be found in the judgment of Lord Denning M.R. in Metropolitan Properties Co (F.G.C.) Ltd v. Lannon (1968) 3 All E.R. 304 at 310 where he said:

> "..... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact, favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. ..... The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: The judge was biased."

A Resident Magistrate assigned to a parish in Jamaica, has wide criminal and civil jurisdiction. A particular person might appear before him on criminal charges on repeated occasions. Should that Resident Magistrate having heard one case be forever disqualified from trying that accused person on

the ground that there would be a real likelihood of bias in the Resident Magistrate? Would this real likelihood of bias depend upon the result of the first case? If at the first trial the accused person was found not guilty at the end of the prosecution's case on a no-case submission, could that alone give rise to an allegation that on a subsequent occasion, the Resident Magistrate who recalled the earlier trial, could not go on to quite properly try the accused for a different crime? It seems to us that right-thinking members of the society would affirm the integrity of the Resident Magistrate in presiding over such trials and say that the question of bias certainly does not arise.

It was submitted that once the Resident Magistrate conceded that he recalled the earlier case, the danger of an unconscious bias existed. The authorities relied on by Mr. Saunders do show that the court should be mindful of the conscious as well as the unconscious bias, and that this might affect judges of all degrees. In R. v. Liverpool City Justices ex parte Topping (1983) 1 All E.R. 490 Ackner L.J. cited with approval a passage from the judgment of Frankfurter J. in Public Utilities Commission of the District of Columbia v. Pollak (1952) 343 U.S. 451 at 466-67 to this effect:

> "The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions.

> "This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true that reason cannot control the sub-conscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not fairly lead others to believe that they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact."

At the stage of the trial when it was brought to the attention of the learned Resident Magistrate that he had on an earlier occasion heard a portion of the evidence of the complainant, the Resident Magistrate made no statement, nor did he give any indication that he had formed any view of the complainant, or of her evidence and he certainly said nothing concerning the appellant. There being nothing in the conduct of the Resident Magistrate to indicate a tittle of bias, from what source could the reality of a likelihood or even a suspicion of bias arise in the mind of a right-thinking person? This Court in R. v. Ruel Gordon (1969-70) 14 W.I.R. 21, after consideration of the judgment of Devlin L.J. in R. v. Barnsley Licensing Justices (1960) 2 All E.R. 703 which made express reference to unconscious bias, was able to say:

> "he learned resident magistrate who s a trained lawyer must be taken o have disabused his mind of any nowledge he may have gained from he previous trial, and must be aken to have applied himself to the ssues presented to him in the case f the second information."

Ruel Gordon had been convicted for a Road Traffi offence on the morning of October 29, 1968 and later on that same day the same Resident Magistrate proceeded to try him on a second charge of a breach of the Road Traffic Law. The second conviction was upheld on appeal and the allegation of bias rejected.

Campbell v. Guelph (1963) 5 W.I.R. 366; 6 J.L.R. 143; exemplifies the circumstance where the Resident Magistrate having discredited a plaintiff in one case, heard a second case brought by the same plaintiff for a similar remedy. This second trial was held to be objectionable as that plaintiff and indeed any informed onlooker would think that plaintiff's case could not be fairly tried by a Resident Magistrate who had doubts about the plaintiff's veracity.

This appeal has nothing to do with administrative convenience. This is not a case where ex facie, an unjust procedure was being propped up with arguments that to act otherwise would be ruinous to the administration of the Resident Magistrate's Court. Useful as they may be in relevant circumstances, we find no reason to rely on the dicta in R. v. Liverpool City Justices (supra) where it was said that administrative convenience should never take precedence over a bad system.

On the facts of the instant case the learned Resident Magistrate had not adjudicated in any meaningful way upon the evidence tendered by the prosecution in the case against Christie and had merely acquiesced in the decision of the prosecutor to offer no further evidence. If an inference could be drawn from this, it would certainly not be one that the Resident Magistrate was so overly impressed with the evidence or the demeanour of the complainant that this favourable

impression would last for one year and four months, that is to say from January 1987, when Christie was dismissed to April 1988 when the appellant's trial commenced. In our view the appellant has not shown that any person who had knowledge of the facts could have formed the impression that the appellant was unlikely to obtain a fair trial before the Resident Magistrate due to his conscious or unconscious bias in the case.

There was no merit whatever in the ground of appeal which complained that the Resident Magistrate improperly restricted cross-examination of the complainant or that the verdict was unreasonable having regard to the evidence. It was the function of the Resident Magistrate to evaluate the evidence and to give weight to the discrepancies in the evidence. He found the discrepancies in the defence irreconcilable and we see no basis upon which that finding could be reversed.

For these reasons we dismissed the appeal.