

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 95/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Downer, J.A.  
The Hon. Mr. Justice Gordon, J.A. (Ag.)

R. v. DEBBIE MYERS

H. Williams for Appellant

Miss V. Grant for Crown

November 2, 1988

CAMPBELL, J.A.

The appellant Debbie Myers was convicted in the Resident Magistrate's Court for the offences of (a) using indecent language contrary to section 3 (z) of the Airport Authority Regulations and also of the offence of entering a restricted area to wit the Customs Hall at the Norman Manley International Airport without authority contrary to section 4 (b) of the aforesaid Regulations.

The brief facts are that on the 26th of April, 1987 at about 2.00 p.m. the appellant was seen in the Customs Hall around a conveyor belt looking on luggage which was being off-loaded. Acting Corporal Richard Mitchell was instructed by a Customs' Supervisor to remove her from the Customs Hall. He acted accordingly. He approached her and told her to leave the Customs Hall because she did not travel on that particular flight. The crown did not adduce evidence showing that she had been asked to produce any permit authorising her to be in the Customs Hall and that she had failed to provide her authority for being where she was.

The appellant gave sworn testimony explaining the circumstances in which she was in the Customs Hall, and through her counsel, sought to tender in evidence a document purporting to be her authority. This document, which

appeared to be what is described as a "PD Form" and constituted prima facie valid authority was regrettably refused admission in evidence by the learned Resident Magistrate. Thus, at the end of the case the appellant could justifiably complain that she ought to have been left unmolested, because she had proper authority to be where she was. We do not think that the offence involving breach of section 4 (b) of the Airport Authority Regulations had been established. We say so because one of the constituent elements of the offence was absence of authority but the crown having disabled itself from confirming whether or not she had authority by not asking her to produce such authority and thereafter successfully objecting to the admission in evidence of the document which she sought to produce, cannot thereafter say that her presence in the Customs Hall was without authority. Accordingly, the conviction in respect of the offence contrary to section 4 (b) of the Airport Authority Regulations cannot stand. The appeal from the conviction for this offence is allowed, the conviction is quashed and the sentence set aside. In respect of the offence of using indecent language contrary to section 3 (z) of the aforesaid Airport Authority Regulations it was a question of fact whether she did use the language as stated in evidence by the crown and disputed by her in her sworn testimony. The learned Resident Magistrate in her finding of fact made a specific finding that the appellant did use indecent language to the officer. It was within her competence to determine on the basis of credibility the evidence which she would or would not accept. Though the fine imposed, does appear to us to be on the high side it may be that the demeanour of the appellant was such that the learned Resident Magistrate saw in her a person who was ever ready to use expletives. Again the learned Resident Magistrate may have considered the appellant's conduct as amounting to both an affront to a police officer and a threat to him as to what she would do when this officer and herself met in town hence the substantial fine imposed. We see no good reason to disturb the conviction and fine. In any case there is no appeal against sentence. The appeal against conviction is dismissed.

The conviction and the fine which has been imposed are confirmed.

In conclusion, the appeal is allowed in respect of the conviction under section 4 (b). The said conviction is quashed and the sentence set aside. The appeal against conviction for using indecent language contrary to section 3 (z) is dismissed.