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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 02/2005

BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MRS. JUSTICE McCALLA J.A. (Ag.)

R v LEROY LOWE

Leonard S. Green for the appellant
Herbert McKenzie, Deputy Director of Public Prosecutions (Ag.) for the Crown.

18th and 19th April, 2005 and 25th May, 2005

SMITH, J.A.:

The appellant was convicted in the Resident Magistrate's Court for the parish of St. James on two informations for breaches of the Corruption Prevention Act.

The first Information charged that on the 21st August, 2003, the appellant, a member of the Jamaica Constabulary Force, corruptly solicited and accepted the sum of $7,000 from Keith Taylor for withdrawing a Traffic Ticket issued to Keith Taylor for breach of the Road Traffic Act and for the release of his minibus Reg. No. 8368EB.

The second Information charged a similar offence to the first. The particulars differ in that the offence is alleged to have taken place on the 29th August, 2003 and the sum received was $10,000 to withdraw two

tickets issued to Gary Taylor (the son of Keith Taylor) and to release the motor car, registration 0093DV seized from Gary.

The 1st Information- No. 21844/03

As regards the first Information the evidence comes from the prosecution witnesses Mr. Keith Taylor and Inspector Milton and from the appellant himself.

The facts in outline on which the prosecution relied are as follows: Inspector Winston Milton was in August, 2003, in charge of traffic in the parish of St. James. The appellant was one of the ten police officers under his command.

On the 15th August, 2003 about 4:00pm, the Inspector was on patrol duty with Constable Shawn Allen. He was observing a white Hiace minibus which was parked on Barnett Street. Consequent on his observations he warned the driver Mr. Keith Taylor for prosecution for operating his private vehicle as a public passenger vehicle.

Constable Allen on the instruction of the Inspector, issued a ticket charging Mr. Taylor for the offence of "No Road Licence". He explained the system in respect of the issuance of a traffic ticket. It is sufficient to state that for each issuance there are one original and four copies. The offender is given a yellow copy. The original and two copies are submitted to the Traffic Office for processing and a copy is kept in the ticket book. The ticket book with a copy was tendered in evidence.

After Mr. Taylor was served with the ticket his vehicle was impounded. An "impound form" was written up by Cons. Allen on the instructions of the Inspector. The original form was handed to Mr. Keith Taylor. A copy was retained in the "impound book".

Mr. Keith Taylor is the owner and operator of a passenger bus, a van and a taxi. Mr. Taylor's evidence as to his being given a traffic ticket and the impounding of his bus is more or less consistent with the evidence of Inspector Milton. Mr. Taylor further testified that after his bus was impounded he made inquiries as to how he could retrieve it. These inquiries led him to the appellant whom he did not know before. He told the appellant that his bus was impounded and asked him if he could help him to get it back. He said the appellant told him that he would "have to touch him with ten thousand ($10,000)." Mr. Taylor said he gave the appellant seven thousand dollars ($7,000) as also the ticket and the "impound form." The appellant told him to wait for him at the Freeport Police Station. At the station, the appellant told him to wait outside. Shortly after this, the appellant went to Mr. Taylor and returned the "impound form" to him. According to the witness, the form " had something written on it" which was absent when he handed it to the appellant. He took this form to the Transport Authority and after paying the pound fees of $2,000 his bus was returned to him.

In his defence to this offence the appellant denied asking Keith Taylor for $7,000 to release the impounded bus. He agreed that he effected the release of the said bus but said that he did so under the instructions of Inspector Milton. He admitted that he "signed" Inspector Milton's name for him on the release form.

Inspector Milton was recalled by the learned trial judge. He told the Court that he instructed the appellant to release Taylor's vehicle in order to allow the offender to take the steps necessary for compliance with the law.

The Second Information – No. 21845/03

Gary Taylor, the son of Keith Taylor, is a taxi operator. He used a Caldina motor car owned by his father as a taxi. In August, 2003 his car was seized by Inspector Milton who instructed the appellant to have Gary Taylor prosecuted for obstructing traffic and operating a private vehicle as a public passenger vehicle without a road licence. The appellant was also instructed to impound the vehicle. The Inspector later spoke to the appellant who told him that he had served Gary with tickets as instructed and that the vehicle was impounded.

Gary Taylor testified that when the appellant was writing up the tickets he asked the appellant to give him a chance. The appellant refused his request. His evidence is that when the appellant was writing up the ticket the appellant asked him for his father and he told the

appellant that his father was at home. He further said that when he went home he gave his father the tickets and told him that the appellant had seized his car. He asked his father to speak to the appellant about it.

Mr. Keith Taylor told the trial court that he saw the appellant at Reading the day after he seized his son's car. Mr. Taylor said he asked the appellant why he wanted to see him. The appellant, he said, told him that he should give him $10,000 for the release of the car. Mr. Taylor promised that he would take the money to the appellant. The witness telephoned the Office of Professional Responsibility (OPR) and spoke with Detective Sgt. Morris who arranged a meeting on the 29th August, 2003 at a hotel in Montego Bay. At the meeting were Mr. Taylor, his driver, Sgt. Morris, Sgt. Redway and Detective Cpl. Jackson.

Sgt. Morris gave Mr. Taylor ten (10) one thousand dollar notes. Each of the notes had the letters "L.M." inscribed under the Coat of Arms. The arrangement was that Mr. Taylor would give these notes ($10,000) to the appellant and signal Sgt. Morris and his assistants when the money was passed. Mr. Taylor enfolded the money with the tickets and proceeded to Barnett Street Police Station. He was followed by Sgt. Morris and his team. At the station he saw the appellant in the garage cleaning his motor bike. He went up to him, identified himself, told him he had the money and the two tickets and handed them to him. The appellant observed that he did not give him the "impound form." Mr.

Taylor indicated that the form was in the bus and set off ostensibly to fetch it. On his way to the bus he gave Sgt. Morris the signal as was arranged.

Sgt. Morris testified that when he got the signal he went into the barrack room where he saw the appellant sitting on a bed. The appellant was dressed in uniform "with leggings worn by bike officers". Sgt. Morris, who did not know him before, said, "Mr. Lowe, police, OPR". The appellant stood and said "Is Mr. Lowe you want, he is by the bathroom let me go and get him for you." By this time Cpl. Jackson and Sgt. Redway had joined them. As the appellant was about to pass Sgt. Morris, the Sergeant grabbed him "around his body restricting both hands". The appellant said "OK I am Lowe". Cpl. Jackson searched the appellant, a sum of money was found but these notes did not bear the initials "LM". This was returned to the appellant. Cpl. Jackson carried out further search and found the money given to Mr. Taylor in the leggings of the appellant's right foot. With these notes were the two tickets. The appellant was ultimately charged with breaches of the Corruption Prevention Act. The evidence of Cpl. Jackson and Sgt. Redway support that of Sgt. Morris.

The Defence

In his defence the appellant gave evidence denying the charges. He called some five (5) witnesses in support of his defence. The appellant

testified that on Friday, the 29th August at about 11:30 a.m. he was on mobile patrol duty along Gloucester Avenue, St. James. He was dressed in uniform. He stopped his motor cycle at the Jamaica Police Credit Union building. He went inside and withdrew $35,000.00. Subsequently he received a telephone call and proceeded to the Barnett Street Police Station. He entered the barrack area and parked his bike. He called to two young girls who were waiting on him. Apart from the girls one of the helpers, Jean, was also in the barrack area. The girls handed him a bag containing fruits. He went inside his barrack room and sat on the bed. The girls stood at the door. He saw a rasta man, whom he later identified as Mr. Keith Taylor, walking towards his barrack room. He asked Taylor what he wanted and Taylor replied "a yu mi come to". He told Taylor that he could not deal with him at that time and that he should wait outside. Taylor he said, turned around and walked off. About two minutes after Taylor left, the appellant heard someone say "Lowe " He did not answer. A man in civilian attire walked up to the door and asked "a who name Lowe?" This man he later identified as Detective Sgt. Morris. The appellant asked Sgt. Morris if he knew whom he was looking for. Sgt. Morris said "no". The appellant advised him " well look around". Sgt. Morris, he said, stepped off as if he was leaving. The appellant got up off the bed and exited his barrack room. He felt someone holding him around his waist pinning his arms to his body. It was Sgt. Morris. Another

person gripped the appellant's neck. A third person also held him. These other persons were Cpl. Jackson and Sgt. Redway. He did not know them before. Cpl. Jackson searched the pockets of the appellant. A struggle ensued. The appellant shouted: "Wha uno a hold me up fah, who uno" Sgt. Morris told his assistants to search the appellant's pocket. His shirt pockets were torn and money and documents removed therefrom. He heard someone shouting "gunmen hold up Lowe". He then heard someone say "hold it police OPR". On hearing this he stopped resisting. The money and documents removed from his shirt pocket were returned to him. His firearm was taken from him and later handed to Inspector Milton. The appellant swore that after a short while he saw Cpl. Jackson at the front door of the barrack area "holding the yellow paper resembling tickets with some $1,000 bills". Cpl. Jackson said to him " A dis me tek from you shoes". He denied that any of the men took money from his shoes or leggings. He denied demanding money from Mr. Keith Taylor.

Constable Evan Grant, attached to the Montego Bay Freeport Police Station testified that on the 29th August, 2003 around 10:00 a.m. he was at the Police Credit Union. While there he saw the manager of the Credit Union, hand the appellant a sum of money. The appellant placed the money in his shirt pocket. From the Credit Union the witness went to the Barnett Street Police Station. While at that station he heard a lady shouting "Gunmen hold up Lowe in the barrack room". Grant and other

policemen rushed to the barrack room. He saw a man" holding onto Lowe by his waist from behind" two other men were there – one had two guns in hands. Grant enquired, "what is this for?" The men responded "OPR". The witness said he told them" you did not find anything so you have gone all the way to tear his pockets off". One of the three men, he said, ran towards a grey Toyota Corolla parked at the station and returned saying "this money was found on Mr. Lowe" He testified that he did not see anyone take money from the appellants leggings.

Keneisha McLeod, a 16 year old student from Catadupa swore that on the 29th August, 2003 between 11:00 a.m. and 12 noon she was at the Barnett Street Police Station. Her mother had sent her there to the appellant. She was in the company of a 10 year old friend. Shortly after she arrived at the station, the appellant entered on a bike. The appellant, she said, invited them to his barrack room and there she gave him a bag with ackees and other things. While she was in the barrack room she saw a rasta man (Mr. Keith Taylor) in the barrack area. The appellant asked him what he wanted and he said "A yu mi come to." The appellant told him that he could not "deal with him now and that he must wait outside". The man, she said, left. After he left she saw another man who asked "who is Mr. Lowe". Mr. Lowe, she said , asked him if he knew whom he was looking for and he said no. Mr. Lowe told him to look around the place. According to her when Mr. Lowe was closing the door to the

Barrack room, the man held him. Two other men appeared; they also held unto Mr. Lowe who started to fight them off. At this stage Keniesha ran out of the barrack area.

Constable Conrad Jones attached to the Barnett Street Police Station gave evidence on behalf of the appellant to the following effect. On the 29th August, 2003 about 12:30 p.m. he was in the guard room at the station when he heard something. He ran into the barrack area where he saw a man holding the appellant. Another man was frisking the appellant. A third man was there with two firearms in hands. He said that he saw one of the men leave the building and return with money in his hand. The man raised his hand with the money and said " a this me tek from you".

Kathleen White, an ancillary worker at the Barnett Street Police station also gave evidence on behalf of the appellant. The important aspect of her evidence is that after the men had searched the appellant she saw Cpl. Jackson go outside the barrack area to the rasta man. She said that she saw Jackson take money from the rasta man (Keith Taylor). He then returned to the barrack room with the money wrapped in a yellow paper and said "see the money me tek from him". She said that she asked Jackson "why you never show us the money before you go outside". According to her, Jackson made no reply.

that is required to determine the guilt or innocence of an accused before the court.

(3) The learned trial judge erred in that she failed in her reasons for judgment to deal with both counts in the trial separately and gave no separate analysis of the evidence as it related to the individual counts contained in informations numbered 21844 and 21845/03 thereby rendering the process of adjudication unfair.

(4) The learned trial judge failed to conduct any enquiries or investigations to determine whether the main witness for prosecution, Keith Taylor, took an oath that was binding on his conscience and by so doing, she failed to ensure that he was properly sworn and that when he swore by "Adonai the almighty" that act constituted an oath that was binding on his conscience to speak the truth.

Ground 1

In respect of the information 21844/03 the prosecution's case, as we have seen, was based on the evidence of Inspector Milton and Mr. Keith Taylor. Only the appellant gave evidence of his defence. The learned Resident Magistrate rejected the evidence of the appellant as being incredible. The learned Resident Magistrate after reminding herself of the burden of proof stated that she had the opportunity to assess the demeanour of the prosecution's witnesses and found them to be quite

forthright. She stated her findings of facts (pp 83-4). She demonstrated that she was mindful of the standard of proof. The complaint that the learned judge failed to properly analyse the evidence of the defence witnesses is in our view misconceived in so far as this information is concerned.

This court is very reluctant to interfere with findings of facts and will only do so where it is shown that the Resident Magistrate was obviously and palpably wrong.

In respect of information 21845/03 the learned Resident Magistrate again stated her findings of fact as she is by statute required to do in certain cases. See section 291 of the Judicature (Resident Magistrates) Act. There is no statutory requirement for Resident Magistrate to give reasons for judgment – see ***R v Malek and Reyes*** 9JLR 553. It must be remembered that the proceedings before the magistrate are summary in the sense that they are carried out with dispatch and with the omission of certain formalities usually required by law. Further section 291 (supra) directs the magistrate to record a statement in summary form of his findings of facts on which the verdict of guilty is founded. In a sense the verdict by a Resident Magistrate is in the nature of a special verdict as she is only required to find the facts on which the verdict is based – see ***R v Mary Lynch*** RMCA No. 16/93 delivered 28th June, 1993 at page 7.

In support of his contention counsel for the appellant cited ***R v Earl Johnson*** 30 JLR 143. This case involves proceedings in the High Court Division of the Gun Court. In that forum the trial judge is required to give reasons for his decision. In our view this case is not helpful. This ground fails.

Ground 2

It would be fair to say that during dialogue between bench and bar. Counsel conceded that ground 2 cannot succeed.

Ground 3

The complaint here is that the learned Resident Magistrate did not give separate consideration to each charge. As Mr. McKenzie for the Crown submitted the learned Resident Magistrate clearly demonstrated that she was mindful of the requirement for separate consideration of each charge. In her reasons for judgment she listed her findings of facts in respect of the informations separately. In respect of Information 21844 she found:

(i) That in August 15, 2003 a bus owned by Keith Taylor was seized by Inspector Milton and taken to the Transport Authority pound.

(ii) That consequent on the seizure, Keith Taylor contacted the appellant who informed him of the condition upon which he would assist him.

(iii) That the condition was the payment of money.

(iv) That Keith Taylor paid the appellant $7000 in fulfillment of the condition.

(v) That the destruction of the tickets was part of the bargain.

In respect of Informations 21845/03 the learned Magistrate found.

(i) That in August 2003, a car owned by Keith Taylor and driven by his son Gary Taylor was escorted to the pound by the appellant.

(ii) That a meeting took place between Mr. Keith Taylor and the appellant.

(iii) That the appellant made a request for payment

(iv) That Taylor contacted the OPR

(v) That there was a meeting of Taylor, Sgt. Morris and others

(vi) That at the meeting an "operation" was planned.

(vii) That pursuant to this plan Taylor went to the appellant and handed him $10,000 consisting of ten $1,000 marked bills.

(viii) That the appellant was held by Sgt. Morris and company, searched and the marked bills found on his person.

We need only to state the above to indicate that this ground is without merit.

Ground 4

The witness, Mr. Keith Taylor, is said to be a member of a rastafarian sect. Before giving evidence he took the following oath:

> "I swear by Adonai, the Almighty the Creator of heaven and earth to tell the truth the whole truth and nothing but the truth."

Of course "Adonai" is the Hebrew name for God. The complaint is that the learned Resident Magistrate failed to make an enquiry in order to ascertain whether the witness would be taking an oath which was binding on his conscience. Accordingly, counsel submitted that the Resident Magistrate failed to ensure that the witness was properly sworn. In ***R v Hines and King*** 12 JLR 545 this Court held that a witness must be permitted to be sworn in a form which he claims to be binding on his conscience. Following ***R v Clark*** [1962] 1All ER 428 the Court held that it was the duty of the trial court to ascertain what form of oath the witness considers to be binding on his conscience where he voluntarily objects to be sworn in the manner prescribed. The record does not directly indicate that the witness declined to take the oath in the form prescribed by section 3 of the Oaths Act. No issue was made of the procedure adopted at trial. We are not able to assume that the learned trial judge did not follow the correct procedure. The fact that she made a note of the oath the witness took, indicates, we think, that there was a discussion and that the Resident Magistrate concluded that the oath recorded was what the witness regarded as binding his conscience. We, however, would hasten to add that that it is desirable for Resident Magistrates to

make a note of the reason for any departure from the usual practice. This ground also fails.

For the reasons given we have come to the conclusion that this appeal must be dismissed and the convictions and sentences affirmed.