JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 51/89

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

REGINA

VS.

RAAM PERSHADSINGH

W. B. Frankson, Q.C. for the appellant

Paul Dennis for the Crown

July 17, 1989

ROWE, P.:

The appellant was convicted in the Kingston Traffic Court on the 28th of April, 1989 by Her Honour Mrs. Majorie Smith of two traffic offences and following upon those convictions and the sentences imposed, he has appealed. The appeal has raised two interesting points of law and as usual we are happy to have Mr. Frankson who has so ably argued these points.

On the 14th of June, 1988, a Sunday afternoon, at about 1:30 p.m. a police corporal was on traffic duty along King Street in Kingston and he noticed a Datsun motor car being driven northerly along King Street from the North Street direction approaching Garrick Lane. It was being driven by the appellant and as the vehicle was proceeding northerly those vehicles which were proceeding southerly had to swerve

left to avoid a collision with the Datsun motor car. He signalled that motor car to stop, which it did, and the police officer said he approached the appellant and he asked for the appellant's documents in relation to the motor car. It was disccvered that the Certificate of Fitness had expired only a very short time before i.e. on the 8th of June. He said he informed the appellant that he had been driving the wrong way on a One Way street and he was also committing the offence of Careless Driving, for which offences he warned the appellant for prosecution.

The police officer said that when the appellant was warned, he said:

> "I had gone to visit a sick person at the Kingston Public Hospital and my mind was so taken up with the person's illness that I had turned up King Street."

At trial the appellant pleaded "Not Guilty" to the offences of disobeying the One Way Traffic Sign and to Careless Driving and a number of points of law were taken. These points have been summarized in the Grounds of Appeal filed in this particular case and argued by Mr. Frankson.

The first ground was that the learned trial judge had no jurisdiction to hear and determine the complaints against the appellant. This ground arose out of evidence which was led by the prosecution that the officer who stopped the appellant and warned him for prosecution was not the one who swore to the informations as a result of which the summons were issued to Mr. Pershadsingh, the appellant.

Mr. Frankson relied upon the authority of Warren v. Robert McKenzie 3 J.L.R. at page 241 in which Mr. Justice Savary held, that in a summary case the proper issue of a summons was a condition precedent to the Justices' jurisdiction to hear and determine the matter and therefore, the Justice before whom the

complaint was made is the same Justice of the Peace who must issue the summons in the case. In the instant case, there is no doubt that the Acting Deputy Clerk of Courts was the person before whom the complaint was made and the summons was issued by the same Acting Deputy Clerk of Courts. The real point in this case is that the complaint was made not by the corporal who stopped the appellant but by Sergeant Morris Swaby, who swore that he had been credibly informed and verily believed that the offences alleged against the appellant were committed. Mr. Frankson argued that the only person with authority to lay an information before the Justice is the person who witnessed the offences or who reasonably suspected the person of having committed the offences.

The Justices of the Peace Jurisdiction Act, which controls the issue of summonses, provides in Section 2 for the general issue of summonses and the proviso to that section says:

> ".... that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, ..."

And if it does appear to the Justices that a person has been deceived by any variance between the information and what evidence is given at trial the Justices shall, if they so think, adjourn the matter for hearing at some future date. Mr. Frankson was not at all saying that the appellant in this case was deceived by anything which was contained in these informations.

Mr. Frankson was referred to Section 9 of the Justices of the Peace Jurisdiction Act which we think really gives the perfect answer to the point at issue. Section 9 states in part:-

> ".... every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or solicitor, or other person authorized in that behalf."

It is, therefore, clear that the policy of the law is that a person who is authorized by the eye-witness to make a complaint can do so and in this case there was nothing to suggest that the officer, the sergeant of police, who said he was "credibly informed and verily believed" was not a person so authorized. We, therefore, think that there is no merit in ground 1 of the Grounds of Appeal.

Information Number 26636 of 1987 charged the appellant that he drove a motor vehicle along King Street in a northerly direction and failed to obey a One Way Traffic Sign prohibiting vehicles to travel along the said road in a northerly direction between North Street and Garrick Lane. The evidence from the witness Corporal Benjamin was that between North Street and Garrick Lane there was no sign erected, painted or in any way established which would indicate that that portion of the road was One Way in a northerly direction. What he said, was that, about one and a half chains above, that is north of Garrick Lane, there existed a traffic sign with arrows indicating that movement along that road was One Way. It seems to us that it would be quite impossible to say that the person who entered North Street from King Street and drove along up to Garrick Lane could be said to be disobeying a traffic sign which would not be reached for another one and a half chains when there was nothing up to that point to indicate that such a sign was exhibited.

We think that the appropriate traffic sign should be immediately erected at the intersection of North Street and King Street to indicate to the public that it is impermissible for one to turn left from North Street into King Street. We, therefore, think that the learned Resident Magistrate in finding as she did, that she accepted the police evidence that a One Way Sign was posted on King Street, indicating that it is One Way from north to south, was giving to the evidence an

interpretation which it cannot properly bear and, therefore, the conviction in relation to that offence cannot stand.

We will allow the appeal in relation to the conviction for disobeying the One Way sign, and set aside the sentence and enter a verdict of acquittal.

The third issue related to the offence of careless driving. The Ground of Appeal is that the finding that the defendant drove his motor car without due care and attention at King Street, was contrary to law against the weight of the evidence and was not supported by the evidence. We think that there was abundant evidence on which the learned Resident Magistrate could base her finding. There was the admission by the appellant that he had inadvertently and in a moment of stress turned left along King Street which inferentially he knew to be a One Way street and that he drove the wrong way on a One Way street. That would by itself be with driving without due care and attention. The fact that the vehicles coming from north to south along King Street had to veer away from the appellant's vehicle, so as to avoid a collision, is further evidence that he was driving in a way that could menace other people if they were not keeping a proper look out. We, therefore, think that there is no merit in that particular Ground of Appeal.

We accept the submissions of Mr. Frankson that the sentences imposed in relation to the conviction for disobeying the One Way signal and the careless driving charge, could not stand. We are of the opinion that the two charges arose out of one activity and it would have been wrong in principle to have imposed two substantive penalties in relation to that one activity. As it is, however, having set aside the conviction for disobeying the One Way Signal, there is no need to trouble the rather modest fine which was imposed in relation to the Careless Driving charge.