[2011] JMCA Crim 17

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 22/2010

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McINTOSH JA

DEWAYNE WILLIAMS v R

Patrick Bailey and Alando Terrelonge instructed by Bailey Terrelonge Allen for the appellant

Mrs Diahann Gordon-Harrison and Miss Michelle Salmon for the Crown

6, 7 October, 20 December 2010 and 1 April 2011

PHILLIPS JA

[1] This is an appeal from the decision of Her Honour Mrs Lorna Shelly Williams, Resident Magistrate for the Corporate Area Resident Magistrate's Court (Criminal Division). The appellant, who was a member of the Jamaica Constabulary Force, assigned to the traffic division had been charged with two offences under the Corruption (Prevention) Act ('the Act'), namely, corruptly soliciting i.e. that DeWayne Williams being a public servant to wit, a member of the Jamaica Constabulary Force, on 8 June 2009 in the parish of Kingston committed an act of corruption by corruptly soliciting $2,000.00, directly from Shoinwayne Edwards in order not to prosecute him

for a breach of the Road Traffic Act in the performance of his public function and corruptly accepting being a public servant to wit, a member of the Jamaica Constabulary Force on 8 day of June 2009 in the parish of St Andrew committed an act of corruption by corruptly accepting $2,000.00, directly from Sho-Wayne Edwards in order not to prosecute him for breach of the Road Traffic Act in the performance of his public function. He pleaded not guilty to both charges. From the outset, the prosecution offered no evidence against the appellant on the latter charge. On 9 February 2010, the appellant was found guilty of the former offence and sentenced to four months imprisonment at hard labour. His appeal was heard on 6 and 7 October 2010, and on 20 December 2010, we dismissed the appeal and promised to put our reasons for that decision in writing. This is the fulfillment of that promise.

The proceedings below

[2] In the Resident Magistrate's Court, the prosecution relied on seven witnesses, six of whom were police officers and each of whom gave evidence of different aspects of what can best be described as a "sting operation". The appellant gave an unsworn statement from the dock. The only lay witness was the complainant, Mr Shoinwayne Edwards. His evidence was that on the morning of 8 June 2009, he was driving his 1990 Nissan Micra motorcar up Duke Street Kingston and, although he slowed down at the intersection of Duke Street and National Heroes Circle, he failed to stop at the stop sign there and proceeded to turn left onto National Heroes Circle. He was stopped, pulled over to the left side of the road by a group of police officers, all of whom were in uniform.

[3] The complainant testified that the appellant approached him, requested his documents, and informed him that he was going to ticket him for disobeying the stop sign. Thereafter the story unfolds rather interestingly. According to the complainant, the appellant told him that he would have to pay a fine of $4,000.00 and that six points would be deducted from his driver's licence. The complainant duly gave the appellant his documents and the appellant wrote up a ticket and gave him the yellow copy, which he checked to ensure that the offence noted was correct. He also looked at the signature on the ticket, which was 'D. Williams'.

[4] The complainant told the court that, after he was told of the fine and the points to be deducted, the following exchange took place between himself and the appellant. The appellant said to him, "so weh you a do, me a write the ticket you no", to which the complainant responded, "me no have no money pan me you no". The appellant then asked, "so what me ago tell the Sarge?" At this point, the appellant requested the complainant's cellular phone number from him and told him that he would call him about midday.

[5] The complainant said that he then went back to his workplace which is in close proximity to Market Place. Whilst there, he thought about the incident and decided to call 311, the number for 'Kingfish'. Throughout the day, he told the court, there were many calls from him to that number and from that number to him dealing with the situation. In due course, he also received the promised call from the appellant, who identified himself as the officer who had ticketed him that morning. In answer to the appellant's query as to who he (the complainant) was, the complainant replied that he

was "the one driving the little blue car". The complainant told the appellant that he did not have the money, but would try to get it and, when asked about the amount, the appellant responded, "give me $2,000.00 me nah kill you".

[6] The complainant testified that he had several conversations after that with the appellant, the latter calling him on his cell phone and each time identifying himself as the officer who had ticketed him that morning. The appellant, he said, repeatedly gave him his location, including at one stage the Police Credit Union, and indicated that he would call back to make arrangements, which he did. The meeting place was agreed to be at the Market Place on Constant Spring Road in the parish of Saint Andrew.

[7] In the interim, the complainant told the court, he had also had several discussions with the officers at 'Kingfish', to whom he had reported the matter and had been given certain instructions. He had a meeting with Deputy Superintendent Clunis of the police Anti-Corruption Branch, who made arrangements for the SIM card in his cell phone to be replaced with one which had recording facilities, and for him to be given four $500.00 notes, each marked with the letters "ACB" below the coat of arms. Deputy Superintendent Clunis then put in place arrangements for a team of police officers to be on hand at the Market Place at the time when the complainant and the appellant were scheduled to meet there. One of the officers was armed with a hand held digital camera, with instructions to video tape the arrest of the appellant.

[8] In due course, the appellant called the complainant to say that he was on South Camp Road and that he would call as he got nearer to the meeting place, which he did.

By this time the complainant was in his car at the Market Place waiting for the appellant to arrive. The appellant called again and told him that he was about to turn into Market Place, indicating that he was driving a white Nissan Sunny motor car and would turn on his headlights so that the complainant could identify him. Once the appellant arrived, he and the complainant spoke and then the complainant left his car to sit beside the appellant in his Nissan Sunny. The complainant then handed over to the appellant the four marked $500.00 notes, along with the yellow copy of the traffic ticket that the appellant had given him that morning. He then asked the appellant what he was "going to do with the copy from the book", to which the appellant responded that he "would deal with it" and that the complainant did not "have to worry".

[9] The complainant's evidence was that while he was with the appellant in his car at Market Place, they had a conversation about purchasing computers, as he had told the appellant, in response to his enquiry, that he worked at the Market Place in a computer store. The appellant had asked whether he could arrange a deal with regard to the purchase of a laptop computer, which the complainant indicated that he could, although he denied that there was any arrangement between them with regard to "a reconditioned laptop".

[10] The complainant then stepped out of the car, leaving the appellant alone in the car, and rubbed the back of his head, which was the signal previously arranged with the officers to indicate that he had handed over the money and the ticket to the appellant. The team of police officers, wearing marked police vests, then approached the appellant's car, surrounded it and ordered the appellant out of the car. The marked

$500.00 notes were retrieved from the floor of the appellant's car in front of the driver's seat, while the yellow copy of the traffic ticket was found folded in the compartment in the driver's door. Both "finds" were pointed out to the appellant, who was then told of the allegations, cautioned and arrested for breach of the Act. A total of seven traffic ticket books were also taken from the passenger seat of the car, one of which contained information relating to the traffic ticket issued to the complainant. The police officers compiled a file for submission to the office of the Director of Public Prosecutions for a ruling, which file included a transcript and two discs in relation to the recorded conversation between the complainant and the appellant as well as the videotaping of part of the incident at the Market Place. The director's ruling was that the appellant should be prosecuted.

[11] The complainant next saw the appellant in court at the trial, where he identified the marked $500.00 notes, as well as the yellow copy of the traffic ticket. He told the court that he did not go anywhere to pay any fine, that the appellant had not told him to go to any court and he had not done so. When he was cross-examined on behalf of the appellant, the complainant stated that he was the holder of a general driver's licence and that all the documents pertaining to his car were in order at the material time. He accepted that he had committed a traffic offence by failing to stop at the stop sign, indicating that he had not seen the police officers until after he had broken the stop sign. He also accepted that he had been given a valid ticket, which contained the date and time that he was to attend the Traffic Court. Although he agreed that one of the police officers at the intersection of Duke Street and National Heroes Circle, who

appeared to be the leader of the group, was dressed in a khaki uniform, he was unable to say if he was a sergeant. He did not know who Sergeant Reid was, nor whether he had had anything to do with the ticket which had been issued to him. He accepted that when he told the appellant that he was employed to the computer store he had not spoken the truth; he was, he said, "just playing along". He denied that it had been agreed that the appellant would pay down $30,000.00 on a computer, maintaining that no amount had been agreed, and he also denied that the appellant had said that he would go to the Police Credit Union to obtain the $30,000.00 for that purpose. With regard to the ticket, he stated that he had not been asked to sign it and confirmed that he had not done so, though he denied having refused to do so. He stated that, although he had to commute from Yallahs in St Thomas to Kingston every day, he had not been experiencing difficulty buying petrol for his motor car and so was not worried about the payment of the $4,000.00 fine. He denied that he had requested the appellant to do him a favour by not turning over the ticket to the proper authorities. He was not aware whether the ticket had been turned over to the authorities, neither was he aware of a bench warrant being issued for him for failure to attend court. He insisted that the appellant had taken the copy of the ticket and the four $500.00 notes from him, and had not thrown the same on the floor of the car.

[12] At the close of the Crown's case, and after an unsuccessful no case submission by the defence , the appellant made an unsworn statement from the dock. He told the court that on 8 June 2009, he had been attached to a special operation team at the Police Traffic Headquarters, whose primary function was to "do Stop Signs, persons

disobeying Stop Signs and seizure of illegal taxis". He confirmed that at the material time he had been at West Heroes Circle with other police personnel "conducting a covertt (sic) Stop Sign operation led by Inspector Brown". He explained the procedure being deployed that morning, by which certain officers dressed in civilian clothes were positioned at the stop sign at Duke Street, while he and others were at West Heroes Circle receiving communication through walkie-talkie radios with regard to motorists who had disobeyed the stop sign at the Duke Street intersection. These vehicles were, he said, identified by description and registration number, and as one of the officers, he issued tickets to all offenders that morning, informing them of the charge, payment date and court date. He recalled that one of the offenders (the complainant), had indicated that he worked at a computer store and inquired if the officers had computers and that when he responded in the negative, the complainant left a number at which he could be contacted.

[13] The appellant said that when he got off duty at noon, he had issued all tickets as required, which were handed in to the proper authorities. He said he told the Inspector about the "guy and the computer issue" and that he was "going to look at his laptop computer system". He said that he called the complainant and, after indicating his interest, was told by him that the price was about $30,000.00 up, to which his response was that he would go to the Police Credit Union to obtain the funds, and then go to the store to look at the computers. He said that he had told the complainant that he would call him when he reached in the vicinity of Half Way Tree, and he then proceeded to the Police Credit Union and withdrew $30,000.00. Having left the credit union, he said,

that he received a call from the complainant, who indicated that he was able to meet then as he was on a lunch break and gave him directions to the store at Market Place. When he drove into Market Place in front of the computer store, he saw the complainant, who identified himself, and encouraged him not to go to park his car, but to allow him (the complainant) to enter his (the appellant's) car, sit in the passenger seat and talk to him. He said the complainant then asked him what he could do about the ticket he had received earlier, to which he replied that he could not help him. According to the appellant, he indicated to the complainant that, "all tickets are handed in and he needs to go and pay that ticket". He said that the complainant then left the vehicle, held his head "like someone pondering" and then invited the appellant to park his car and come inside the store. At this time, the appellant said, he denied the invitation, indicating that he would do so at another time. The remaining part of the unsworn statement is best quoted in full:

> "He then came back to the front passenger door and uttered words, 'you can't deal with it for me?' I turn to him and said, 'you need to pay your ticket, I cannot help you son.' That is when I put my vehicle in gear it is a standard vehicle and was about to move.
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> He then threw something inside the vehicle. I then saw many plain clothes came [sic] up to my car and pointed their firearm at me. They identified themselves as police that I should not move [sic]. They said exit the vehicle and I complied. They did a thorough search and continued their investigation.
>
> At no time Mr. Edwards and myself had any agreement about money, canceling [sic] of ticket or otherwise. He was not known to me before that day in question."

The findings of fact and reasons for decision of the Resident Magistrate

[14] The learned Resident Magistrate set out in detail the relevant provision of the Act under which the appellant was charged, the particulars of the offence, and the ingredients of the same which the prosecution had to prove, viz, that the appellant was a public servant; that he intentionally, and corruptly did the act and that he directly or indirectly solicited money, or other benefit for doing an act or omitting to do an act in the performance of his public functions (section 14 (1) (a)). She stated that the case turned almost entirely on the credibility of the witnesses and recognized that the burden of proof lay on the prosecution throughout and that she ought not to draw any inference adverse to the appellant from the fact that he gave an unsworn statement.

[15] A number of facts were not in issue before the learned Resident Magistrate. Among these were that the appellant was a public servant; that the complainant had disobeyed the stop sign; that the appellant had given the complainant a ticket for so doing and had told him that the offence carried a fine of $4,000.00 and a deduction of six points from his driver's licence; and that subsequently they met at Market Place.

[16] With regard to the disputed facts, the Resident Magistrate accepted that the appellant "intentionally and corruptly solicited" the complainant when he said "so weh you a do, me a write the ticket you no", prior to writing the ticket and that "these words mean and were intended by the Accused to mean that the Accused was asking that the Complainant give him something (which turned out to be money)…". (Although, the learned Resident Magistrate went on to state that the purpose of the appellant's implied request was "to prevent him from writing a ticket"; and it was

agreed on both sides that this was not the purpose of the request, since the ticket was in fact issued.) She accepted that the complainant told the appellant that he did not have any money and that thereafter calls between the appellant and the complainant resulted in the appellant agreeing to accept the sum of $2,000.00 to "cause there to be no liability to pay a fine, no prosecution, or other disadvantage to the Complainant" for the said offence. The court also accepted that the complainant and the appellant met at Market Place, where the complainant paid the appellant the agreed sum in four marked $500.00 bills and gave him his copy of the traffic ticket at Market Place, and that those four bills were found on the floor of the driver's side of the appellant's car and that the copy of the ticket was found in the driver's side door. She accordingly preferred the evidence of the complainant to that of the appellant, whose account of the purpose of the meeting at Market Place she rejected and concluded that the Crown had proven all the ingredients of the offence beyond reasonable doubt.

[17] In coming to her decision, the learned Resident Magistrate gave herself all the requisite warnings in a case such as this and applied the principles enunciated in ***Jagdeo Singh v The State***, (2005) 68 WIR 424, and ***R v Smith*** [1960] 2QB 423; 1960] 1All ER 256. Thus, she stated that, "even if the Accused was unable or unwilling to commit the corrupt act he had solicited, the offence would still have been committed". She then went on to consider all relevant factors in the sentencing process, particularly those in the appellant's favour, and imposed a sentence of four months imprisonment with hard labour.

The appeal

[18] On 18 February 2010, the notice and grounds of appeal was filed. There were four grounds as set out below:

> "1. The Learned Resident Magistrate erred and misdirected herself in that Section 14(1)(a) of the Corruption (Prevention) Act gave a specific statutory definition of an act of corruption and that the evidence adduced by the Crown was not sufficient to meet the elements of that definition.
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> 2. The Learned Resident Magistrate erred in failing to uphold the No Case Submission made, on behalf of the Appellant, at the close of the Crown's Case.
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> 3. The Learned Resident Magistrate erred in failing to appreciate that an essential ingredient of the offence had not been proved and therefore the offence had not been established.
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> 4. The Learned Resident Magistrate erred and misdirected herself in failing to appreciate that on the Evidence before her, the Appellant issued the Traffic Ticket and turned in the ticket to the appropriate authorities and in so doing did all that was required of the Applicant in the performance of his public functions."

The appellant's submissions

[19] Mr Bailey for the appellant sought and was granted the court's permission, to argue grounds one and two together, which he said subsumed grounds three and four. Counsel referred to section 14 (1) (a) of the Act, and reiterated his understanding of the interpretation to be given to that provision. He submitted that the section creates a specific statutory offence and the learned Resident Magistrate cannot act outside of it. There are two stages which made up the offence, he argued: (i) the issue of a

traffic ticket to an offender on the commission by that offender of a "ticketable" traffic offence, and (ii) duly turning over the appropriate counterparts of that ticket to the relevant traffic authorities.

[20] Counsel submitted that there was clear evidence that the ticket had been issued to the complainant who was entitled to retain the ticket. It was an exhibit in the case. He submitted that the appellant had given evidence (which was not correct as he gave an unsworn statement) about the system of issuing the ticket, informing the offenders of the charge, payment dates, and court dates if the fines were not paid, and indicated that when he got through his duties at around noon of that day, he handed in all traffic tickets to the proper authorities. He also said that he told the complainant this at Market Place, which was why he could not help him.

[21] On the other hand there was no evidence from the Crown whether the official records disclosed any information with regard to the counterpart of that ticket, or if the original had been sent to the Traffic Court. It was therefore, submitted, that the ticket having been issued and the counterpart having been turned over, the appellant "did not omit to do any act and faithfully discharged his public function, as required by Law." Additionally, in relation to the traffic ticket and the performance of his public functions, his role in the matter had been spent. So, it was submitted, that even acceptance by the court of the payment of the sum of $2,000.00 could not cure that deficiency with regard to the statutory requirements. The fact that the ticket was issued also encouraged counsel to argue that the learned Resident Magistrate misunderstood the

meaning of the words, ”so weh you a do, me a write the ticket you no” as they should be read with the words, “so what me a go tell the Sarge” to mean, and an inference could be so drawn, that the appellant was not in charge, but the sergeant was, and it was the complainant who was importuning the appellant.

[22] Counsel reminded the court that the appellant’s account of what occurred was entirely different from the complainant’s, and the latter had indicated when giving evidence in the Resident Magistrate’s court that he had not told the truth with regard to his employment at the computer store. So, counsel submitted, the Crown was relying on the evidence of a “confessed liar”, whereas the appellant had merely said that he was interested in buying a computer, and was to meet the complainant at the computer store in Market Place, where the complainant was supposed to work.

[23] It was submitted further, that the learned Resident Magistrate did not properly evaluate the appellant’s case, as she rejected his stance on the purpose of the meeting at the Market Place, although the complainant himself admitted that a discussion which could have confirmed that purpose had occurred. It was submitted, she was not mindful of the approach to be taken in respect of the case of the appellant, for when assessing the appellant’s case, she ought not to simply have rejected it out of hand, but should have examined, whether on a balance of probabilities, it could be true. Additionally, one of the officers on the team took all of the appellant’s traffic books into his possession, and an investigation was launched yet no further charge was laid, and that is a factor which ought to have weighed in the appellant’s favour. In any event,

counsel submitted that the words in the information, "in order not to prosecute him for a breach of the Road Traffic Act" in performance of his functions, was from the outset misconceived as it is the responsibility of the police to charge the offender, not to prosecute him.

[24] It was also the appellant's contention that the transcript of the telephone conversation and the video tape of the meeting were supposed to have been recorded pursuant to the "sting operation", yet the former did not have any dialogue relating to a "bribe" or "getting rid of the ticket" and the latter did not show monies passing from the complainant to the appellant, nor did it show the appellant taking back the yellow ticket from the complainant. The tape, he said, did not show how either came to be in the car, thus, neither was of any evidential value whatsoever, and the fact that the Crown had offered no evidence in respect of the "accepting" charge, was telling. The two offences, it was submitted, were so interwoven that since the Crown offered no evidence with regard to the charge relating to the acceptance of the monies, then the evidence on the charge relating to the solicitation became more vulnerable, especially as the evidence, such as it was, came from a "confessed liar". Counsel therefore maintained that even if the learned Resident Magistrate believed that there was **mens rea,** there was no **actus reus** and the Crown had therefore failed to prove an essential element of the offence. Therefore, pursuant to the first limb of the Practice Note of Lord Parker, C.J [1962] 1 All ER 448, the no case submission ought to have succeeded.

[25] Counsel endeavoured to distinguish the cases referred to in the learned Resident Magistrate's reasons for her decision on the basis that the provisions in the Jamaican legislation were dissimilar from that of the UK's. Indeed the provisions in the Jamaican legislation were more restrictive, and as the public functions required of the appellant had been performed, and there was therefore no **actus reus** proved, the cases were inapplicable.

The respondent's submissions

[26] Counsel for the Crown submitted that, contrary to the submissions of Mr Bailey, the wording of the relevant provision of the Act was instructive, particularly since the offences of "soliciting" and "accepting" were articulated in the alternative (section 14 (1) (a)). Counsel submitted that they are separate offences and a public servant commits an offence (i) if he omits to act in keeping with his public duty and (ii) he promises to do something in the performance of his public functions. Counsel took issue with the submissions of Mr Bailey that the appellant had given evidence which amounted to "I saw disobedience with the stop sign, I issued a ticket, and I handed over the same to the relevant authorities", on the basis that there was no evidence that the ticket was handed in, it was merely made in the unsworn statement of the appellant, and went unchallenged, as the Crown could not cross examine at that stage. Counsel indicated that the Crown was not accepting that to be the situation. If the Crown had been advancing the case that the appellant had omitted to do something that he ought to have done, then she submitted, the Crown should have led evidence as to whether the ticket had been turned in, but it was the Crown's case, and this was

supported by evidence, that the appellant had promised to do a positive act, and had solicited the complainant after the ticket had been issued. It was the Crown's submission that, "the appellant was really saying - if I get the $2,000.00, I will deal with it, the appellant is soliciting with a view to doing a positive act". The issuing of the ticket, she argued, marked the commencement of the intention to prosecute, and subsequent to the issue of the ticket the appellant sought to engage the complainant to hand over monies so that the issue of the ticket could be dealt with, and the prosecution could be aborted. It was immaterial, Counsel submitted, whether the solicitation culminated into the specific result promised, and on the strict interpretation of the statute, what the appellant had done had been caught by the section, as a mere request for a bribe is sufficient to constitute a solicitation. Further, it was argued, on the principles enunciated by Lord Goddard, CJ in ***R v Carr*** [1956] 3 All ER 979, even if the public servant makes the solicitation, and does not accept or fulfill what he has promised to do, as he may be unable to do so, once he has promised to do something in exchange for a benefit to himself, as was done in this case, "then therein lies the breach of the section and the actus reus of the offence".

[27] Counsel reviewed the evidence given by the complainant including the words uttered by the appellant on the morning when the ticket was issued, and later when the specific amount to be paid was agreed, then at Market Place when the complainant was encouraged that the appellant would deal with it and he didn't "have to worry" and concluded that there was sufficient evidence to satisfy the ingredients of the offence. She stated that the solicitation in this case seemed to be the very mischief

that the Act was promulgated to cure. Counsel conceded, as indicated, that the statement by the learned Resident Magistrate that the solicitation in the case was in relation to the performance of the appellant's public function in the issue of the traffic ticket, was not quite accurate, and submitted that although it could amount to a misdirection, there was a preponderance of evidence to ground the finding that there was solicitation as indicated previously.

[28] With regard to the issue of the interpretation of the words "in order not to prosecute" in the information, counsel for the Crown challenged the submission that the role of the police was to charge an offender and not to prosecute the case, by submitting that the prosecution of someone for any offence is a long process, and an act done to thwart the completion of the same would fall afoul of the relevant section, thus the prosecution of the appellant was not misconceived from its inception. Counsel also challenged the description attributed to the complainant by counsel, namely, a "confessed liar" and reminded the court that the complainant only admitted to not telling the truth in relation to his employment at the computer store, when he stated, he was going along with the appellant as part of the instructions pursuant to the "sting operation", otherwise he had been candid and frank in his evidence, and had accepted right away his disobedience of the stop sign. Counsel noted that the learned Resident Magistrate had viewed the complainant as a potential accomplice which she said was inaccurate in the circumstances, but indicated that it showed that she recognized that she should approach his evidence with caution. Counsel dismissed, as having no merit, the submission that the learned Resident Magistrate did not approach

the evidence of the appellant as she ought to have done, and pointed out that she rejected the account of the appellant as she was entitled to do.

[29] Counsel also submitted that the transcript did not disclose details of the solicitation as it only reflected a recording of the last conversation between the appellant and the complainant: thus, although counsel conceded that the absence of a recording of all the conversations which would have included the solicitation reduced its significance, that did not mean that the conversations did not occur. Similarly, the video tape did not show the passing of money as it was only a record of the arrest of the appellant, which was after the payment of the "bribe".

[30] Counsel relied heavily on ***Jagdeo Singh v The State***, not for assistance with the interpretation of the offence by way of comparison with the legislation in Jamaica as against that in the United Kingdom, but for the judicial definitions of "soliciting" and "corrupt" which she submitted were applicable to the instant case. In response, Mr Bailey indicated that there was no crime called "solicitation" and or "acceptance" to be read with "corruptly", both only became crimes when captured by section 14 (1) (a) of the Act.

Analysis

[31] Section 14 (1) (a) of the Act states as follows:

> "14. (1) A public servant commits an act of corruption if he -----

> (a) corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person for doing any act or omitting to do any act in the performance of his public function."

Both counsel gave their interpretations of this provision as it relates to the definition of "an act of corruption". Section 15 of the Act makes it an offence if one commits an act of corruption, and the person who does so liable to summary conviction in the Resident Magistrate's Court, and conviction in the Circuit Court, with the respective sanctions.

[32] The particulars of the offence charged read as follows:

> "… you Dewayne Williams being a public servant to wit a member of the Jamaica Constabulary Force on the 8th day of June 2009 in the Parish of Kingston committed an act of corruption by corruptly soliciting two thousand ($2,000.00) directly from Mr. Shoinwayne Edwards in order not to prosecute him for a breach of the Road Traffic Act in performance of your public functions contrary to section 14 (1) (a) of the Corruption (Prevention) Act."

Two cases were referred to in the Resident Magistrate's reasons for her decision which do shed some light on how this provision should be interpreted. ***Jagdeo Singh***, (an appeal to the Privy Council from Trinidad and Tobago) and ***R v Smith***) (an appeal from the Leeds Assizes to the Court of Criminal Appeal in the UK).

[33] In ***Jagdeo Singh*** the comparative section 3 reads as follows:

> "(1) Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any

> gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.
>
> (2) Every person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gift, loan, fee, reward or advantage whatsoever, to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence."

The appellant in that case was charged on two counts of corruption, under section 3 (1) above, and found guilty on both counts. The convictions were upheld on appeal but quashed in the Privy Council, on the basis of an inadequate "good character" direction. The facts of that case were, inter alia, that the appellant, an attorney of some standing had been engaged by one "Sherry" to represent her partner "John" initially at a preliminary inquiry in relation to a drug trafficking charge, then subsequently on another charge for possession of ganja for the purpose of trafficking. Pursuant to the appellant's representation of John, there was a meeting between the appellant and herself in which Sherry claimed that the appellant said that John would get bail, but she had to pay the sum of $40,000.00 to achieve this, which sum was to be paid to the magistrate and the prosecutor. When she asked for time to pay, the appellant, she said, insisted on an answer, as, he said he had to tell the magistrate whether the sum

would be paid. She agreed to do so. The appellant denied any such conversation or arrangement and although, (as the series of events which occurred, are much more complicated and since not relevant to this case are not set out here) he ultimately reluctantly went to collect the funds, said the money represented his fees. When he collected the bag of money, he was surrounded by a number of police officers, and later charged with breaches of the above statute.

[34] It was accepted that the appellant had never suggested or offered a bribe to the magistrate or the prosecutor, or that he had authority to act on their behalf, or that he intended to bribe either the magistrate or the prosecutor or that any such bribe would be countenanced by either of them. The arguments in the case were focused on whether the section could be breached, if the monies to be used as a bribe did not reach the intended recipient, as in that case the public officer could not be exposed to temptation. It was argued that, "A person soliciting or receiving money falsely said to be intended as a bribe might well commit some other offence, but would not commit the offence of corruptly soliciting or receiving contrary to s.3". That argument however was rejected as the provision was said (even in its more restricted 1906 version, which is not dissimilar to our provision) not to permit a defence that the recipient of the benefit did not show favour to the party conferring it, nor one that the recipient accepted the benefit never intending to show favour. Lord Bingham of Cornhill who delivered the judgment of the Board endorsed the principles set out in ***R v Carr***, and in ***R v Mills*** (1978) 68 Cr App Rep 154, where Geoffrey Lane L.J stated at page 158 and 159:

> "in our judgment it is enough that the recipient takes the gift knowing that it is intended as a bribe. By accepting it as a bribe and intending to keep it he enters into a bargain, despite the fact that he may make to himself a mental reservation to the effect that he is not going to carry out his side of the bargain. The bargain remains a corrupt bargain, even though he may not be intending to carry out his intended corrupt act. Such a private determination avails him no more than would a private determination that a similar payment in respect of past favours was received by him because of some innocent matters other than a past favour."

[35] It was clear, in the circumstances, that Sherry would have committed an offence, contrary to section 3(2) of their statute, and it therefore would have appeared a surprising result if the appellant who, on the Crown's case if accepted, instigated the arrangement, was not also guilty. The Board indicated that "it would be no defence even if the offeror did not intend the transaction to progress beyond acceptance of the money and had an ulterior motive of exposing corruption", as was the case in ***R v Smith***. Lord Bingham referred to the statement of some antiquity of Willes J in ***Cooper v Slade*** (1858) 6 HL Cas 746, where he said at page 773:

> "I think the word 'corruptly' in this statute means not 'dishonestly', but in purposely doing an act which the law forbids as tending to corrupt voters, whether it be to give a pecuniary inducement to vote, or a reward for having voted in any particular manner. Both the giver and the receiver in such a case may be said to act 'corruptly'."

and indicated that that principle had underpinned English authorities for a very long time.

[36] The Board referred also to ***R v Wellburn, Nurdin and Randall*** (1979) 69 Cr App Rep 254 and ***R v Harrington*** (2000) (unreported), in which the principle was applied. In demonstrating the application of the principle in ***R v Harrington***, Lord Bingham stated the following at page 431 of ***Jagdeo***:

> "…the defendant had been convicted under section 1 (1) of the 1889 Act. He had solicited money from a third party on the pretext that the money would be used as an inducement to persuade a police officer not to proceed with charges against the third party. The prosecution accepted that the police officer had not been party to this scheme, that the defendant had not been acting as the police officer's agent and that the pretext was false, since the defendant had intended to keep the money for himself. It was argued on appeal that the defendant's conduct might have been dishonest but was not corrupt. This submission was rejected. The court applied the ruling in ***R v Smith*** and concluded (at para [31]):
>
> > 'Furthermore, in our view, on the plain wording of the statute, it is not necessary to prove that any member, officer or servant of a public body was in fact aware of what was going on when the improper offer was made or the bribe was passed, provided that the apparent purpose of the transaction was to affect the conduct of such a person corruptly.' "

It was this position which caused the Board to reject the appeal on behalf of the appellant on this issue.

[37] In fact, Lawton LJ in ***R v Wellburn*** specifically referred to a direction given by the recorder to the jury in that case which was challenged by the appellants, but which

was approved on appeal, as having adopted the words of Willes J in ***Cooper v Slade*** and Lord Parker CJ in ***R v Smith***. The direction was as follows:

> "Corruptly is a simple English adverb and I am not going to explain it to you except to say that it does not mean dishonestly. It is a different word it means purposefully doing an act which the law forbids as tending to corrupt."

[38] In ***R v Smith***, the appellant was charged with corruption, in that he corruptly offered a gift to the mayor in order for the mayor to use his influence with the council in favour of the appellant. The appellant's case was that it was not a genuine offer as it was made for the purpose of exposing corruption. In dealing with the use of the word "corruptly" Lord Parker, CJ had this to say:

> "In the present case, as I have said, the admitted intention was that the mayor would agree to receive money and, accordingly, the intention undoubtedly was that the may or should agree to something which itself constituted an offence and, indeed, constituted an offence of corruption within the very same section. The sole question, for the purposes of this case, as it seems to the court, is whether the word 'corruptly' in its context means deliberately offering money, or whatever it may be, with the intention that it should operate on the mind of the person to whom it is made so as to make him enter into what I may call a corrupt bargain, or whether it means that the intention must be that the transaction should go right through and that the offeror should obtain the favour for which he sought. It seems to this court that the word 'corruptly' here used (and it is a word which appears throughout the Act and other Acts dealing with corruption) is used in the former sense, namely, that it denotes that the person making the offer

> does so deliberately and with the intention that the person to whom it is addressed should enter into a corrupt bargain."

He too endorsed the words of Willes J, in ***Cooper v Slade,*** and added, " The mischief aimed at by the Act, as the judge told the jury, was to prevent public officers or public servants being put in a position where they are subject to temptation. Accordingly, to adopt the words of Willes J, the appellant even on his own case was here purposely doing an act which the law forbids…".

[39] In ***R v Carr,*** Lord Goddard, CJ made it clear that it would be a misdirection to say that if an officer is charged with taking a bribe, the tribunal must be satisfied not only that he received a bribe as an inducement to show favour but also that he did show favour. That would be wrong; "the bribe was given to him as an inducement to show favour. It does not matter if he did show favour. If the person did what is called 'double-crossed', and did not do what he was bribed for, that is no reason why he should be acquitted of taking a bribe. If he takes a bribe and goes straight off and says 'Here is the bribe he has given me', that may show in certain circumstances that he is not acting improperly". Lord Goddard concluded, "I have said what I have said merely because if there is an idea that in such an offence it is necessary to show that the person did that which the bribe was given to him to do, it is an impression that should be corrected".

[40] On a review of the above authorities and on an examination of the specific section of the Act, it is clear that the words connote an offence once a public servant

purposely does an act which the law forbids such as directly or indirectly requesting money or a benefit, such as a promise for himself or another to do or refrain from doing any act in the performance of his public functions. In our view, the offence is made out, and the act of corruption occurs if the public servant only solicits the article, etc., for himself and to his advantage, to do some act in connection with the performance of his public functions, which in this case was the prosecution of the traffic offence.

[41] What can also be gleaned from the authorities is that the offence is committed once the apparent purpose of the transaction was to affect the conduct of the complainant corruptly. In keeping with the wording of our statute the 'person' must be a public servant. It matters not whether the complainant was fully aware of the intention of the appellant, or whether the appellant intended to conclude the corrupt transaction.

[42] ***R v Carr*** shows that it is not necessary for the prosecution to prove that the appellant, who had requested the money, did that which he was bribed to do. So it was not necessary for the Crown to prove that the appellant had aborted the prosecution of the traffic offence, or that a bench warrant had been issued for the appellant's arrest as he failed to pay the fine, or to attend court. The arrangement between the appellant and the complainant to meet to effect the corrupt bargain, and then later the acceptance of the money by the appellant would separately both be offences under the statute. Once the court accepted the complainant as a witness of truth then, as in ***R v Carr***, with regard to the corrupt payment of the sum of $2,000.00, he would have been

'going along' with the 'sting operation', and would have shown that he was not acting improperly.

[43] In the instant case the appellant used these words:

> "so weh you a do, me a write the ticket you no"
>
> "so what me ago tell the Sarge"
>
> "give me $2,000.00 me nah kill you"
>
> "I will deal with it. You don't have to worry."

The words, in our opinion, constituted an offer made deliberately from the appellant to the complainant with the intention that he should enter into a corrupt bargain.

[44] It was our view that there was more than sufficient reason for the learned Resident Magistrate to find, as stated previously, that "He intentionally sought a bribe to forbear from performing his public duties. This was patently corrupt".

[45] Additionally the learned Resident Magistrate was concerned that there was no explanation for the traffic ticket in the compartment of the driver's door of the appellant's car. This was a reasonable concern and a powerful bit of evidence, adverse to the appellant. It pointed to the appellant taking back the ticket and thus dealing with the important element of the prosecution, the main act of the appellant in the case, in the performance of his duties, and the main plank on which his case was built. In his unsworn statement, the appellant stated that the ticket had been handed in, but as counsel for the Crown pointed out, that was not evidence, and the learned Resident Magistrate was entitled to give it such weight as she thought it deserved. She rejected it. Additionally, if the learned Resident Magistrate did not accept that the four marked

$500.00 notes were thrown to the floor by the complainant, (as stated by the appellant in his unsworn statement) but accepted the evidence of the complainant that they were placed on the floor by the appellant when his car was surrounded by police in marked vests, then the evidence of payment of the "bribe" to the appellant would be strong and the offence proved without any reasonable doubt. The interpretation given to the provision in the Act by counsel for the appellant is far too narrow. The promise to deal with the ticket after the money to do so had been agreed, was a solicitation to abort the prosecution, (and not to issue the traffic ticket as erroneously stated by the learned Resident Magistrate.) However, whether the ticket reached the authorities, or a bench warrant was issued for the complainant, or the appellant had any intention of going through with his plan set out in his promise, the offence, pursuant to the Practice Note of Lord Parker CJ would have been committed.

[46] We found that the learned Resident Magistrate had not erred in her interpretation of the provisions of the statute, and there was sufficient evidence to ground the ingredients of the statutory offence. It is our view, that the learned Resident Magistrate was correct to reject the no case submission. Further, we could find no fault in her findings on the evidence before her, and no basis to disturb the verdict of guilty which she recorded against the appellant.

[47] Accordingly, on 20 December 2010, as indicated in para. [1], we dismissed the appeal, affirmed the conviction and sentence and ordered that the sentence should commence 20 December 2010.