REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. App. No. S 070 of 2016

BETWEEN

WAYLON JENNINGS

Appellant

AND

ROGER REID

(POLICE CORPORAL #15460)

Respondent

PANEL:

A. Yorke-Soo Hon J.A.

M. Mohammed J.A.

APPEARANCES:

Mr. G. Harrypersad for the Appellant

Mrs. A. Teelucksingh-Ramoutar Assistant D.P.P. for the Respondent

DATE OF DELIVERY: 13th June, 2017

JUDGMENT

Delivered by M. Mohammed, J.A.

Introduction:

(1) The appellant, Waylon Jennings, was charged with obstructing the respondent, Cpl. Roger Reid, in the execution of his duty, contrary to **section 59 of the Police Service Act No. 7 of 2006**. After hearing the evidence on both sides, the magistrate found the appellant guilty of the offence and he was fined $4,500.00, in default, nine months simple imprisonment.

The appellant has appealed his conviction.

The Case for the Respondent:

(2) On the 3rd December, 2012, at around 10:15 p.m., the respondent, Cpl. Reid was driving his private vehicle in a southerly direction along Manahambre Road in Princes Town. While in the vicinity of Series Bar, he observed a grey Nissan Primera motor vehicle driving out of Circular Road. There were five occupants in the vehicle, one of which was the appellant, who occupied the rear, right seat of the vehicle. The vehicle drove across Cpl. Reid's path, causing him to apply brakes so as to avoid a collision. The vehicle drove into the compound of Series Bar and stopped in the car park. Two male occupants alighted from the vehicle and approached Cpl. Reid in a very hostile manner. Both men used obscene language against Cpl. Reid. Cpl. Reid then exited his vehicle and had a conversation with the two men. He identified himself as a police officer and told the men that they were under arrest. The appellant then exited the vehicle, stood between Cpl. Reid and the two men and said in a loud tone, *"Know what you doing. One phone call from me, my aunt is a Superintendent and my brother is a police officer. I could deal with you".* Cpl. Reid identified himself to the appellant as a police officer, cautioned him and warned him about obstructing him in the execution of his duties. The appellant replied, *"Lock them up and see".* Cpl. Reid told the

appellant that he was under arrest. A female occupant of the Nissan Primera motor vehicle then alighted from the vehicle and said something to Cpl. Reid. Cpl. Reid identified himself as a police officer and had a conversation with her. He then contacted other police officers for assistance and when they arrived, he took the appellant and the female occupant, to the Princes Town Police Station. The two men who first approached Cpl. Reid left in the Nissan Primera vehicle by the time the police responded to his call for assistance. On arrival at the Police Station, Cpl. Reid formally charged the appellant for the offence.

The Case for the Appellant:

(3) The appellant elected to give evidence in the matter. He denied obstructing Cpl. Reid in the execution of his duty. The appellant had no previous convictions and no pending matters before the court.

(4) The appellant testified that on the 3rd December, 2012, between the hours of 9:00 p.m. and 10:00 p.m., he, along with other persons, including his girlfriend, Melanie Mohammed, his friend's father, who was known as "Blaxx" and Blaxx's friend, Randy, were in a vehicle in the compound of Series Bar in Princes Town. The vehicle was being driven by Blaxx. The appellant observed the respondent in the driver's seat of a blue Honda motor vehicle which was parked on the pavement, at the front of Series Bar. The appellant exited the vehicle and accompanied his girlfriend to the washroom inside of the bar. When the appellant and his girlfriend returned outside, he saw the vehicle which they arrived in, driving away. Cpl. Reid then approached the appellant and said to him, *"You lock up",* to which the appellant replied, *"For what?"* Cpl. Reid did not respond and he proceeded to make a phone call. Shortly afterwards, a police vehicle arrived. Cpl. Reid and another police officer escorted the appellant into the police vehicle. The appellant's girlfriend then came over and asked Cpl. Reid, *"What you arresting my boyfriend for?"* Cpl. Reid instructed the other police officers to arrest her and after being arrested, she was escorted into the police vehicle. The appellant and his girlfriend were taken to the Princes Town police station where he was charged for the offence of obstructing Cpl. Reid in the execution of his duty.

The Appeal:

<u>Ground 1:</u> The Learned magistrate erred in law in arriving at her decision owing to the inadequacy of evidence to satisfy the ingredients of the offence.

The Appellant's Submissions:

(5) Counsel for the appellant, Mr. Harrypersad, submitted that the respondent failed to establish that the conduct of the appellant prevented him from the lawful execution of his duty. It was submitted that the evidence given by the respondent was that he was speaking to two occupants of the grey Nissan Primera when the appellant approached him, stood between him and the two occupants and made certain utterances. According to Mr. Harrypersad, the term "obstructs" has a certain meaning in the context of police officers. In **<u>Rice v Conolly</u>**[1], the court, in considering section 51(a) of the Police Act 1964, found that the term "obstructs" meant the doing of any act which made it more difficult for the police to carry out their duties. Mr. Harrypersad submitted that in determining guilt, the magistrate must be satisfied that (i) the prosecution has proven that there was an obstruction of a constable, (ii) that the constable was at the time acting in the execution of his duty and (iii) the person obstructing did so wilfully. He relied on the decisions in **<u>Hinchcliffe v Sheldon</u>**[2] and **<u>Werhsof v Metropolitan Police Commissioner</u>**[3] in support of this submission. Mr. Harrypersad further submitted that the prosecution failed to adduce evidence to show that the alleged actions of the appellant was intended to obstruct the respondent in the lawful execution of his duty. In support of this submission, he relied on the decision in **<u>Hills v Ellis</u>**[4].

The Respondent's Submissions:

(6) Counsel for the respondent, Mrs. Teelucksingh-Ramoutar, submitted that the prosecution's evidence was sufficient to establish that the appellant's conduct on the day in question prevented

[1] [1966] 2 QB 414
[2] [1955] 1 WLR 1207
[3] [1978] Crim LR 424
[4] [1983] 1 All ER 667

the respondent from the lawful exercise of his duty. She relied on the evidence of the respondent where he said that while he was having a conversation with two of the occupants of the vehicle, the appellant exited the vehicle, stood between him and the two men and said in a loud tone, *"Know what you doing. One phone call from me, my aunt is a Superintendent and my brother is a police officer. I could deal with you".* Upon being warned by the respondent about the offence of obstructing a police officer in the execution of his duties, the appellant replied, *"Lock them up and see".* According to Mrs. Teelucksingh-Ramoutar, the actions of the appellant, as evinced in the evidence of the respondent, was sufficient to make out the offence in question.

Analysis and Reasoning:

(7) One of the core issues in this appeal is whether the offence of obstructing a police officer in the exercise of his duty was made out against the appellant.

(8) **Section 59 of the Police Service Act No. 7 of 2006** provides that:

> *A person who assaults, obstructs, or resists a police officer in the execution of his duty, or aids or incites another person so to assault, obstruct, or resist a police officer or a person assisting the police officer in the execution of his duty, is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years*

(9) In **Willmott v Atack**[5], Croom-Johnson J. considered the definition of "obstruction" and adopted the test laid down by Lord Goddard C.J. in **Hinchliffe v. Sheldon**[6], where he said, at page 1210:

> *"Obstructing, for the present purpose, means making it more difficult for the police to carry out their duties. It is obvious that the defendant here was detaining the police by giving a warning; he was making it more difficult for the police to get entry into*

[5] [1977] QB 498
[6] Supra

the premises, and the justices were entitled to find as they did, and therefore the appeal is dismissed."

Croom-Johnson J. went on to say:

> *"That phrase, of making it more difficult for the police to discharge their duties, was adopted in this court in Rice v. Connolly [1966] 2 Q.B. 414, where Lord Parker C.J. said, at p. 419:*
>
> > *'To carry the matter a little further, it is in my view clear that 'obstruct' under section 51 (3) of the Police Act 1964 is the doing of any act which makes it more difficult for the police to carry out their duty. That description of obstructing I take from Hinchliffe v. Sheldon.' "*

(10) Mr. Harrypersad submitted that the prosecution failed to adduce evidence to support that the alleged actions of the appellant was intended to obstruct the respondent in the lawful execution of his duty. He relied on the decision in **Hills v Ellis**[7] in support of this. In that case, Mc Cullough J. said at page 671:

> *"What is meant by an 'intention to obstruct'? I would construe 'wilfully obstructs' as doing deliberate actions with the intention of bringing about a state of affairs which, objectively regarded, amount to an obstruction as that phrase was explained by Lord Parker CJ in* Rice v Connolly *[1966] 2 All ER 649 at 651, [1966] 2 QB 414 at 419, ie making it more difficult for the police to carry out their duty. The fact that the defendant might not himself have called that state of affairs an obstruction is, to my mind, immaterial. This is not to say that it is enough to do deliberate actions which, in fact, obstruct; there must be an intention that those actions should result in the further state of affairs to which I have been referring.*

[7] Supra

(11) The gist of the prosecution's evidence was that while Cpl. Reid was in the process of arresting the two male occupants of the Nissan Primera motor vehicle, the appellant alighted from the vehicle, stood between the two men and Cpl. Reid and said in a loud tone, *"Know what you doing. One phone call from me, my aunt is a Superintendent and my brother is a police officer. I could deal with you".* Cpl. Reid informed the appellant about the offence of obstructing him in the execution of his duties, and the appellant responded, *"Lock them up and see".* Cpl. Reid then arrested the appellant.

(12) We are of the view that in the case at bar, the prosecution's evidence against the appellant was more than ample to show, (i) that he made it more difficult for Cpl. Reid to carry out his duties in arresting the two passengers of the vehicle and (ii) that his actions were deliberate and done with the intention to obstruct Cpl. Reid in performing his duty. It was therefore reasonably open to the magistrate based on the evidence to conclude that the appellant obstructed Cpl. Reid in the execution of his duty.

This ground of appeal is without merit.

<u>Ground 2:</u> The decision of the Learned Magistrate is unreasonable and cannot be supported having regard to the evidence.

The Appellant's Submissions:

(13) Mr. Harrypersad contended that the magistrate erred in reaching a decision of guilt on the evidence of the respondent. He submitted that there were certain deficiencies in the prosecution's evidence, namely: (i) there was a failure to discharge the evidential burden placed on them when the respondent failed to lead evidence of the actions of the appellant which obstructed him and (ii) the failure to lead evidence to show how the appellant obstructed the respondent in the lawful execution of his duties. It was submitted that to simply lead evidence saying that, *"he obstructed me in the execution of my duty"* was insufficient to discharge the evidential burden.

The Respondent's Submissions:

(14) Mrs. Teelucksingh-Ramoutar submitted that the prosecution did discharge its evidential burden by leading evidence of the actions of the appellant which caused the obstruction. It was submitted that the evidence of Cpl. Reid, went further than simply saying, *"the appellant obstructed me in the execution of my duty".* The circumstances of the obstruction were clear from the evidence of Cpl. Reid, namely, that the appellant stood between him and the two men and said, *"Know what you doing. One phone call from me, my aunt is a Superintendent and my brother is a police officer. I could deal with you".* Further, when Cpl. Reid informed the appellant about the offence of obstructing him in the execution of his duties, and the appellant responded, *"Lock them up and see".*

Analysis and Reasoning:

(15) We agree with the submissions of Mrs. Teelucksingh-Ramoutar. The clear and compelling evidence on the prosecution's case was that:

(i) The appellant alighted from the vehicle and stood between the two men and Cpl. Reid;
(ii) The appellant said to Cpl. Reid in a loud tone, *"Know what you doing. One phone call from me, my aunt is a Superintendent and my brother is a police officer. I could deal with you".*
(iii) When Cpl. Reid informed the appellant about the offence of obstructing him in the execution of his duties, and the appellant responded, *"Lock them up and see".*

This evidence of Cpl. Reid satisfied the evidential burden placed on the prosecution to show the actions performed by the appellant which amounted to an "obstruction". It was therefore reasonably open to the magistrate to find the appellant guilty of obstructing Cpl. Reid in the exercise of his duty. Indeed, we are of the view that the magistrate's decision was an eminently

reasonable one based upon the evidence and any other decision might well have been a perverse one.

This ground of appeal is without merit.

<u>Ground 3:</u> There was a failure by the Learned Magistrate to give reasons for her decision.

The Appellant's Submissions:

(16) Mr. Harrypersad, in oral arguments to the court, submitted that there was a failure by the magistrate to give reasons on how she dealt with the competing evidence from both sides in arriving at her decision to convict the appellant. He submitted that this failure on the part of the magistrate was fatal to the conviction.

The Respondent's Submissions:

(17) Mrs. Teelucksingh-Ramoutar submitted that the failure of the magistrate to give reasons in the case at bar was not fatal to the conviction. She submitted that (i) the facts of the case were simple, (ii) the case was a straight forward one and (iii) the absence of reasons did not result in prejudice to the appellant in the exercise of his legal right to appeal. The decision in **<u>Francis Jones v Sgt. Sheldon David #11730</u>**[8] was relied on in support of these submissions.

Analysis and Reasoning:

(18) There exists, at common law, a duty for magistrates to furnish reasons for their decision where an appeal has been lodged in relation to that decision. That common law duty of magistrates to provide reasons for their decision where an appeal has been lodged became a statutory duty by

[8] Mag. App. No. 64 of 2014

virtue of the 1986 amendment to the **Summary Courts Act**. **Section 130 B of the Summary Courts Act** provides that a magistrate has a duty to provide reasons for a decision within sixty days of an appellant giving notice of appeal.

(19) The magistrate in the present case did not give reasons for her decision to convict the appellant after finding him guilty of the offence in question. However, this court has said in the decision in **Francis Jones v Sgt. Sheldon David**[9] that "*the absence of written reasons by the magistrate does not automatically generate an iron-clad, free standing ground of appeal"*. The court went on to say at paragraphs 38-39:

> *"…In very exceptional cases the absence of written reasons may generate a free standing ground of appeal where, for example, because of the absence of those reasons, counsel is unable to even formulate a meaningful appellate challenge.*
>
> *The approach to be adopted by the Court of Appeal is a pragmatic, functional one. This approach is context driven and it involves an examination of the evidentiary record, the specific issues raised and any brief oral reasons given by the Magistrate. If the case is (a) factually, a straight forward one; (b) legally, not a complex case; and (c) if the reasons for the magistrate's decision are capable of being ascertained by reference to the record of evidence, then the absence of written reasons may be less likely to deprive the Court of Appeal of its ability to perform the appellate function…"*

(20) We have noticed a growing trend in the magistracy where magistrates omit to give reasons, whether oral or written, when matters are determined and when notices of appeal in those matters are filed. We wish to respectfully say that we frown upon this growing trend. In most cases, especially those which are legally and/or factually complex and where credibility is a live issue, as it almost always will be, this Court requires the reasons, written and/or oral, to allow us to see the magistrate's reasoning process in arriving at the decision. Where reasons for a decision are not given, the Court may at times be unable to properly carry out this function.

[9] Supra

(21) That being said, turning to the case at bar, we find the matter to be a factually straight forward one and it is also legally uncomplicated. Further, reasons capable of supporting the magistrate's decision are clearly discernible by reference to the evidence and the issues generated, as reflected in the record of appeal. In this case, we do not find that the absence of written and/or oral reasons deprived this Court of its ability to perform its appellate review function. The absence of reasons is therefore not fatal to the conviction in this case.

This ground of appeal is without merit.

Disposition:

(22) The appeal is dismissed. The orders of the magistrate are affirmed. In particular, the conviction is affirmed, as is the sentenced imposed.

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A. Yorke-Soo Hon, J.A.

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M. Mohammed, J.A.