

ANGUILLA

IN THE COURT OF APPEAL

MCRAP 2008/001

COMMISSIONER OF POLICE

Appellant

and

PERCY THOMAS

Respondent

Before:

The Hon. Mde. Ola Mae Edwards
The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Davidson Baptiste

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Ms. Vernetta Richardson for Appellant
Ms. Paulette Harrigan for Respondent

2009: November 17, 18.

ORAL JUDGMENT

[1] **EDWARDS, J.A.:** This is an appeal by the Commissioner of Police against the decision of the Magistrate who on 6th November 2008, tried and dismissed the respondent on four (4) complaints Nos. 494 to 497 of 2007.

[2] The respondent was charged by the appellant on 12th December 2007, for committing the following offences on 3rd July 2007, at Long Bay Public Road in the Island of Anguilla.

- (i) No. 494/07: resisting arrest by PC Roger Phillips in the execution of his duties contrary to section 226 of the **Criminal Code** C 140.
- (ii) No. 495/07: obstructing PC Roger Phillips in the execution of his duties contrary to section 351 of the **Criminal Code** C140.

- (iii) No. 496/07: taking part in a prohibited procession for which a permit had not been obtained. Contrary to section 14(b) of the **Public Order Act** at P. 150
- (iv) No. 497/07: inciting persons to take part in a public march contrary to section 15 of the **Public Order Act** Cap. P 150.

[3] The reasons for appealing in the Notice of Appeal are as follows:

- (a) that the decision is unreasonable or cannot be supported by the evidence;
- (b) that the decision was erroneous in point of law in that:
 - (i) complaint number 496/07 was duplicitous;
 - (ii) the Court refused to grant an amendment to complaint number 496/07 after the Court determined that it was duplicitous;
 - (iii) there was no evidence to support complaint 497/07;
 - (iv) there was insufficient evidence to support complaint number 494/07
- (c) that the judgment or sentence was based on a wrong principle or was such that the Magistrate viewing the circumstances reasonably could not properly have so decided.

[4] Upon dismissing the four (4) complaints the learned magistrate bound over the respondent to keep the peace in the sum of EC\$1,000.00 in his own recognizance with his consent without any statutory basis for doing so.

[5] The evidence marshaled by the respondent at the trial disclosed that the respondent, a known activist who in the past had been involved in lawful public marches and demonstrations authorized by the Commissioner of Police, on 3rd July 2007, at about 8:30 a.m. led a public march by approximately 300 Indian workers from the Viceroy Project. These marchers had received no permit from the Commissioner of Police to engage in their protest march along the West End Road to the Valley because of low wages. Police Officers were dispatched from the Police Headquarters to stop the unlawful march.

- [6] The five (5) police officers who testified gave conflicting accounts about how the respondent came to be arrested by PC Roger Phillip who did not testify; although they all deposed that the respondent who was at the head of the marchers made a gesture and spoke loudly and aggressively including that he would not desist or heed the police request.
- [7] PC Lake testified that PC Phillip arrested the respondent for leading an illegal march.
- [8] PC Bryson said that PC Phillip told respondent he was arresting him to prevent a breach of the peace.
- [9] PC Charles testified that PC Phillips told respondent he was arresting him for breach of the peace.
- [10] PC Ichol Mockett's evidence was that PC Phillip told respondent he was arresting him to prevent a breach of the peace.
- [11] There was also conflicting evidence about the respondent's conduct after PC Phillip arrested him, which led to the charges of resisting arrest and obstructing the police in the execution of his duties.
- [12] The learned magistrate stated at paragraph 41 of the judgment that:
"The Court also felt that the Prosecution case was somewhat conflicting and based on its observation of the witness relied on the evidence of Inspector Sinclair and PC Ichol Mockett and where their evidence conflicted with other witnesses preferred to rely on their evidence."
- [13] The magistrate stated that he was not satisfied so that he could feel sure that the defendant in fact incited anyone who was not already involved in the march as the march showed no sign of great planning or preparation. There was no evidence that the respondent was involved in its planning or preparation; or that he was a worker.

[14] The learned magistrate found that:

“There was certainly evidence that PC Phillips and others immediately, and somewhat prematurely... jumped to the conclusion from the defendant’s presence at the front of the march that he was a ring leader and without waiting for him to do some significant and tangible act to confirm their suspicion arrested him.”

[15] Section 194 of the **Magistrate’s Code of Procedure Act** Cap M 5 states:

“(1) Where the Magistrate refused to make a conviction, the complainant may appeal to the Court of Appeal against the decision.

(2)

(3)

Section 206 states:

“On an appeal by motion, the Court of Appeal may draw inferences of fact from the evidence given before the Magistrate and may decide the appeal with reference both to matters of fact and to matters of law.”

Section 210 states:

“The Court of Appeal ... may upon the hearing of the appeal confirm, receive or modify the decision of the Magistrate or remit the matter with the opinion of the Court thereon to the Magistrate or make such other order in the matter as the Court may think just and may by such order exercise any power that the Magistrate might have exercised and the order shall have the same effect and may be enforced in the same manner as if it had been made by the Magistrate...”

[16] Section 14 of the **Public Order Act** states:

“Any person who takes part in a public march or procession

(a) prohibited by section 7;

(b) in respect of which a permit has not been obtained; or

(c) otherwise then in accordance with the conditions of a permit;

is guilty of an offence.”

[17] Section 18(1)(b) of the **Police Act** states that:

“It shall be lawful for any Police Officer to arrest without warrant... (b) any person who commits a breach of the peace in his presence.”

[18] Section 18(2) of the same Act also states that :

“A Police Officer may lawfully arrest without a warrant any person who within view of such Police Officer offends in any manner against any law and whose name and residence are unknown to such Police Officer and cannot be ascertained by him.”

[19] Learned Counsel, Ms. Richardson submitted that the Respondent's arrest was lawful and she relied on the authorities **R v Errol Howell** (1981) 73 Cr App R 31 and **King v Hodges** [1974] Crim L.R. 434. 20. However, the facts in the two (2) cases are distinguishable from the circumstances surrounding the respondent's arrest. In **Errol Howell** the appellant had previously committed a breach of the peace in the presence of the police who arrested him and that police officer had good reason to believe that such breach was and would be continuing.

In **King v Hodges** the Police Officer without arresting the defendant, had attempted to remove the defendant to another premises so as to avoid a breach of the peace. It was held that the police officer was within his rights to take hold of the defendant's elbow and he was still acting in accordance with his duty as a Police Officer when he did that; and although he made no attempt at that stage to arrest him, his conduct in taking hold of his elbow was justifiable and was no assault.

[20] In the respondent's case PC Phillip arrested the respondent and cautioned him for an offence which may not have been arrestable without a warrant, having regard to the conflicting evidence of the police witnesses as to the reason why PC Phillip arrested the respondent.

[21] It appears to us that learned Magistrate applied the wrong test in alluding to the lack of evidence that the respondent had organised the march.

[22] We agree with the submissions of Learned Counsel Ms. Harrigan, however, that on the state of the conflicting evidence the learned magistrate was entitled to arrive at the other findings he made in relation to the complaints for resisting arrest, obstructing the police, and inciting persons to take part in a public march.

- [23] We do not agree with Ms. Harrigan that the complaint charging the respondent with taking part in a prohibited procession for which a permit had not been obtained is duplicitous since this complaint 496/07 clearly did not incorporate the offence under section 14(1)(a) of the **Public Order Act**.
- [24] Exercising our discretion as we are empowered to do, we find that there was ample evidence establishing beyond a reasonable doubt that the respondent committed the offence charged on complaint 496/07.
- [25] We note however that the march was purportedly made lawful by the Commissioner's grant of a permit later that same day.
- [26] In these unusual circumstances, we consider that the sentence that was imposed by the learned magistrate without any statutory basis for doing so, may be an appropriate sentence to impose in respect of the offence on complaint 496/07 where the respondent consents.
- [27] Consequently, we would allow the appeal in respect of complaint No. 496/07 and we find the respondent guilty. We dismiss the appeal in respect of the other complaints and set aside the unlawful sentence. We impose the following sentence on complaint 496 of 2007:

"The respondent is bound over to keep the peace for 6 months in the sum of EC\$1,000.00 in his own recognizance having so consented."

Ola Mae Edwards
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Davidson Baptiste
Justice of Appeal [Ag.]