

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUMCRAP2010/0015

BETWEEN:

[1] VERE BIRD JR.
[2] GASTON BROWNE
[3] MARY CLAIRE HURST
[4] LESTER BIRD
[5] MOLWYN JOSEPH
[6] SHARON KENTISH
[7] JIM GALLOWAY

Appellants

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Reginald Armour, SC

Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Anthony Astaphan, SC with him, Ms. Rika Bird for the Appellants
Mr. Anthony Armstrong, Director of Public Prosecutions for the Respondent

2017: March 2;
2022: November 22.

Criminal appeal – Public Order Act – Addressing a public meeting without permission - Whether the Public Order Act expressly exempts from its application trade union meetings held on Labour day – Whether the meeting which took place at the V. C. Bird bust was a meeting or rally of the Union – Approach of appellate court to magistrate’s findings of fact — Principles governing appellate interference with findings of fact

On Monday, 4th May 2009, Antigua and Barbuda celebrated a public holiday in recognition of Labour Day. It was customary that during Labour Day celebrations held by the Antigua and Barbuda Trades and Labour Union (the “Union”) members of the Antigua and Barbuda Labour Party (the “Labour Party”) would be invited to address the Union’s meetings.

However, the executive of the Union took a decision that during the year 2009 no political figure would address the Union's meeting scheduled to take place on 4th May 2009.

The Labour Party was not enthused with the decision. Despite a meeting being held with the Commissioner of Police and senior police officers to discuss the Labour Party's request to add names to the speaking list at the Labour Day event, the Union refused to add the names. The Commissioner subsequently denied permission for the additional persons to speak. However, the appellants attended and addressed a meeting held at the V. C. Bird bust on Labour Day, which culminated in a criminal complaint being laid against them. The complaint was that they addressed a public meeting when not granted permission to do so by the Commissioner of Police, contrary to section 8(b) of the **Public Order Act**. The appellants were all convicted by the Chief Magistrate and fined a sum of EC\$1200.00 or twelve months imprisonment. Being dissatisfied with the learned magistrate's decision, the appellants filed an appeal challenging their conviction and sentence.

Held: dismissing the appeal and affirming the conviction and sentence, that:

1. As a matter of law, the **Public Order Act** expressly exempts from its application, trade union meetings for the celebration of Labour Day. Once there is a meeting organised by a trade union on Labour Day, the requirement to obtain permission for that meeting or to speak thereat does not apply. The denial of permission to speak by the Commissioner of Police at a Labour day meeting was flawed *ab initio*. This being a Labour Day event to be organised by the Union, there was no requirement as a matter of law, for the Union to seek permission from the Commissioner of Police to hold or organise the meeting. Likewise, there was also no requirement to submit a list of speakers for permission to speak at the meeting or rally. A prosecution founded upon a breach of the **Public Order Act** in circumstances where it was expressly disapplied would be contrary to law. The union's meeting however was usurped and overtaken by the appellants resulting in the Union's General Secretary abandoning the meeting and leaving the scene. What actually transpired was not a meeting of the Union to celebrate Labour Day. The evidence was clear that the appellants spoke at a meeting without the Commissioner's permission. Thus, the disapplication of the **Public Order Act** was not engaged.

Sections 3, 8(b), 9(1)(b) and Section 21(1) of the **Public Order Act**, Cap. 357 of the Laws of Antigua and Barbuda applied; Section 5 of the First Schedule of the **Public Order Act** Cap. 357 of the Laws of Antigua and Barbuda applied.

2. Where a magistrate whose function it is to make findings of fact has done so, and there is evidence which shows that his findings may be justified, it is not the function of the Court of Appeal to interfere by substituting its own view of the facts. In the present case, the magistrate's finding that none of the appellants fell under the statutory exception in section 5 of the First Schedule was clearly open to him on the evidence. It cannot be said that the magistrate's further finding that the appellants addressed a meeting in a public place at the V. C. Bird bust without the prior permission of the Commissioner of Police contrary to section 8 (b) of the **Public**

Order Act was one which no reasonable magistrate could have reached and was therefore justified, on the evidence.

Peters v Peters [1969] 14 WIR 457 applied; Section 8(b) of the **Public Order Act**, Cap. 357 of the Laws of Antigua and Barbuda applied.

JUDGMENT

- [1] **BAPTISTE JA:** A clash of labour. The setting was the V. C. Bird bust. It was 4th May 2009. The celebration of Labour Day in Antigua and Barbuda. An impasse had developed. It concerned who should speak at the meeting the Antigua and Barbuda Trades and Labour Union (“the Union”) organised to celebrate Labour Day. The disputants are the executives of the Union and the Antigua and Barbuda Labour Party (“Labour Party”). The entities had a kinship relationship. Historically, they shared the Labour Day platform. The Union decided that things would be different for Labour Day 2009. Being the workers day, no political figure from the Labour Party would speak on the Union’s platform.
- [2] The Labour Party was not enthused with the decision. A meeting was held with the Commissioner of Police and senior police officers. Both sides were represented. The Labour Party sought to add five or six persons to the list of names the Union had submitted to the Commissioner of Police to speak at its Labour Day event. It was unsuccessful. The Union refused to add the names. The Commissioner denied permission for the additional persons to speak. The Labour Party’s lack of enthusiasm for the Commissioner’s decision was marked by the employment of defiant language by V. C. Bird Jr. Mr. Bird informed the Commissioner to have the riot truck and the riot squad ready because the Labour Party will share the platform on Labour Day. The handcuffs will not be enough to lock up all Labour Party supporters.
- [3] The meeting held at the V. C. Bird bust on Labour Day, culminated in a criminal complaint being laid against the appellants. The complaint was that they addressed a public meeting when not granted permission to do so by the Commissioner of

Police, contrary to section 8(b) of the **Public Order Act**.¹ They were found guilty. This is their appeal against conviction and sentence.

[4] Although several grounds of appeal were filed, Mr. Anthony Astaphan, SC stated that the appellants are essentially pursuing one point which is: whether the **Public Order Act** expressly exempts from its application, trade union meetings held on Labour Day. Thus, once there is a meeting organised by a trade union on Labour Day, the requirement to obtain permission to speak at that meeting does not apply.

[5] The legal framework is contained in the **Public Order Act**. Section 3 thereof ordains that:

“Notwithstanding anything contained in any other law, but subject to section 9, no person may organise, hold, call together or address a meeting in a public place unless a permit has been issued in respect thereof by the Commissioner of Police”.

[6] Section 8(b) of the **Public Order Act** provides:

“8. Any person who –

...

(b) organises, holds, calls together or addresses any meeting in contravention of any of the provisions of this Part or of any permit issued thereunder;

...

is guilty of an offence under this section.”

[7] Section 9(1)(b) of the **Public Order Act** states:

“Nothing in this Part applies to the organising, holding, calling together or addressing of –

“(b) any meeting in connection with any of the purposes for the time being set out in the First Schedule or in connection with such other purposes as may from time to time be included in such Schedule as provided by section 21.”

[8] As far as is material, section 21(1) of the **Public Order Act** provides:

“Nothing in this Part applies to any meetings or marches held or organised in connection with any of the purposes for the time being set out in the First Schedule...”.

¹ Cap. 357 of the Laws of Antigua and Barbuda.

- [9] Section 5 of the First Schedule states: “[m]eetings organised by a trade union in furtherance of a specific trade dispute or for the celebration by trade unions of Labour Day”.
- [10] Mr. Astaphan, SC submits that in view of sections 9 and 21 of the **Public Order Act**, once there is evidence that the meeting was organised by a trade union for Labour Day, there was no requirement for permission to hold, organise or to speak at that specific meeting. Learned Senior Counsel posits that in so far as the specific facts in relation to speaking at a meeting on Labour Day, the exemptions of the **Public Order Act** ought to be given a purposive construction and the penal provisions ought to be restrictively construed.
- [11] Learned Senior Counsel further contends that from the prosecution’s evidence, it was a trade union meeting organised by the Union on Labour Day and that was a meeting the appellants spoke at. Once the court accepts that it was a trade union meeting, there was no requirement for permission for anyone to speak. The penal provision does not apply to a trade union meeting held on Labour Day. In the circumstances, counsel submits that there was no basis in fact or law for the prosecution and conviction of the appellants.
- [12] Mr. Astaphan, SC also submits that the magistrate’s finding that none of the appellants fell under the statutory exception in section 5 of the First Schedule, violated the non-application of the **Public Order Act**. The fact of speakers not being members of the Union is irrelevant. Sections 9 and 21 specifically disapply the provisions of the **Public Order Act** to a meeting of the trade union on Labour Day. There is no dispute that it was a Union meeting on Labour Day and therefore no permission was required.

- [13] In his oral submissions in reply, Mr. Astaphan, SC posits that the dispute is whether the Union could legitimately exclude anybody from speaking at the meeting. Section 6 of the **Public Order Act** does not apply. The controversy was whose names should be added to speak at the meeting of the Union. The charge laid against the appellants is speaking without permission. The police officers were saying to them: you have no permission to speak. Not no permission to organise. No permission to speak at the meeting organised by the Union. The allegation was that they were not Union members and were not authorised to speak at the Union meeting. In view of the section of the **Public Order Act** which requires names to be given, the prosecution proceeded on the view that they spoke at the meeting without permission.
- [14] Mr. Anthony Armstrong, Learned Director of Public Prosecutions, crystallised the issue thus: having regard to the relevant provisions of the **Public Order Act**, when the appellants spoke at the meeting on 4th May 2009, was that a meeting organised by the Union or by the Labour Party or Party members and executives? Mr. Armstrong disagrees that the prosecution's case shows evidence that there was a meeting of a trade union. He contends that the magistrate had before him the evidence of Inspector Jeffers as to who convened the meeting; that evidence does not support a construction that there was a meeting organised or addressed by a trade union.
- [15] Mr. Armstrong points out that the evidence presented shows that if membership dues are in arrears for 52 weeks, membership of the Union ceases. He argues that if the magistrate found that the appellants were members of the Union, that would have been the end of the matter. Both the Union and members of the Labour Party met the Commissioner of Police. The Union was adamant that they did not want the party members to speak at the rally. Mr. Armstrong submits that the Union's intended meeting was not carried on. The stage was stormed. There was a meeting, but that meeting was not organised by the Union.

- [16] As a matter of law, and it is common ground between the parties that, the **Public Order Act** expressly exempts from its application, trade union meetings for the celebration of Labor Day. Once there is a meeting organised by a trade union on Labour Day, the requirement to obtain permission for that meeting or to speak thereat does not apply. It is not disputed that Monday, 4th May 2009 was Labour Day and the Union planned to celebrate the event with a meeting at the V. C. Bird bust. To my mind, the critical question is whether the meeting in question was held by the Union. This is essentially a question of fact which fell to be determined by the magistrate.
- [17] Mr. Stafford Joseph, the General Secretary of the Union, gave evidence for the prosecution. Mr. Joseph's evidence was that at about 8 :15 a.m. on 4th May 2009 he was at the V. C. Bird bust to set up the stage for the Union rally. On approaching the bust, he heard music playing and observed a sound system already in place. Two of the defendants were there, including Vere Bird Jr. Mr. Joseph took his equipment to the front and retreated to the back of the bust. While his sound system was being set up, approaching 9 a.m. members of the Labour Party, that is the defendants, stormed the platform. Mr. Gaston Browne said on the microphone: "comrade Stafford, comrade Leonard fall in line." Upon seeing what was happening he left from the back of the bust and went to the front of the bust and removed the Union's podium. He then returned to the back of the bust and instructed the owner of the sound system that the Union rented to pack up and leave. He departed the area at about 9:30 a.m. In cross-examination, Mr. Joseph explained what he meant by saying "the defendants stormed the platform". By "stormed the platform" he meant they were on the platform.
- [18] The magistrate accepted the evidence of Mr. Joseph and found that the Union had lost control of the situation to the appellants who are members of the Labour Party. What was supposed to be the rally of the Union for which it was granted permission had to be abandoned because of the conduct of the members of the Labour Party.

- [19] Inspector Jeffers testified that on May 4th, 2009, at about 8 a.m. he took up duty at the V.C. Bird bust, along with Assistant Commissioner Albert Smith and Superintendent Weaver. A. C. Smith had a conversation with Mr. Gaston Browne and reminded or told him that he did not have permission to speak. Mr. Browne told him that he was part of the Union, and he could speak. Mr. Browne convened a meeting and called Vere Bird Jr. and proceeded to call several other speakers, including Mr. Sookdial. Mr. Joseph spoke to a man who was there, and he proceeded to off load some equipment from a truck. It was while doing so that Mr. Browne proceeded to convene the meeting.
- [20] Assistant Commissioner Smith gave evidence of arriving at the V. C. Bird bust at about 8:55 a.m. with other police officers. He saw a podium set up at the bust with the abbreviation AT & LU on it and there was music coming from a hi-fi system. Vere Bird Jr. and others were dancing on the platform. He told Mr. Bird that he did not have permission to speak and that he should not attempt to do so. Mr. Bird replied that the Union got permission and they are the same. Shortly after Mr. Browne convened a meeting and began calling persons to speak on the podium including the defendants and Mr. Joseph, the Union's General Secretary. Mr. Joseph did not go. He (A. C. Smith) warned Mr. Browne that he did not have permission to speak from the Commissioner of Police and he should desist from so doing.
- [21] Senior Sergeant Ellis filed a complaint against all the appellants for breaching the **Public Order Act**. Sergeant Ellis stated that during his investigation he saw several letters from the Union and the Labour Party seeking permission to speak on that day. One of the letters was addressed to Mr. Browne and Ms. Mary Claire Hurst from the Commissioner of Police denying the Labour Party's permission to speak on that day at the Union event. The Commissioner of Police gave the Labour Party permission to hold their own meeting after 10:00 a.m. after the Union's rally was finished.

- [22] Mr. Joseph testified that on 16th April 2009, prior to Labour Day, the usual letter was sent to the Commissioner of Police seeking his permission for the Labour Day rally and march commencing from the V. C. Bird bust. Attached to the letter was a list of names of the speakers chosen. None of the appellants were on the list. The Commissioner of Police subsequently received a letter from the Labour Party requesting the addition of five or six names to the Union's list of speakers. A meeting was held on 2nd May 2009 with the Commissioner of Police and senior police officers as well as Union and Labour Party members. The Union did not agree to add further names to the list of speakers.
- [23] The magistrate accepted the evidence of Mr. Joseph, the General Secretary of the Union, that the defendants – members of the Labour Party, stormed the Union's platform and took over the proceedings. Thereafter, he (Mr. Joseph) went to the front of the bust and retrieved the Union's podium and instructed the band that was hired by the Union, to leave the scene. He left shortly after, at about 9:30 a.m.
- [24] The magistrate found that the Union had lost control of the situation to the defendants who were members of the Labour Party. What was supposed to be the rally of the Union which was granted permission from the Commissioner of Police had to be abandoned because of the conduct of the Labour Party.
- [25] The magistrate accepted the evidence of the prosecution that the defendants addressed the Labour Day rally at the V. C. Bird bust when they had no authorisation from the Commissioner of Police to do so. Inspector Jeffers testified that he heard when Mr. Browne convened the meeting and called several persons to the platform to address the gathering.
- [26] The magistrate found that Inspector Jeffer's evidence contradicted that of Mr. Sookdyal, that he Mr. Sookdyal, as First Vice President of the Union, convened the meeting and called upon Mr. Browne to co-chair with him. The magistrate found Sookdyal's evidence to be "a labyrinth of twisted logic and a minefield of lies and

falsehood.” He accepted the evidence of Mr. Joseph as truthful. He also believed the evidence of the police witnesses that the seven defendants spoke on the day in question without authorisation and that the meeting was in fact convened by Mr. Browne, a member of the Labour Party.

- [27] As the magistrate found in accordance with Rule 3 of the rules of the Union and the evidence of Mr. Joseph, none of the defendants was a member of the Union on 4th May 2009, neither financial nor non-financial and had ceased to be members when they failed to pay their contributions in excess of 52 weeks.

- [28] The magistrate found that the rules of the Union made provisions for an executive committee to manage and run the day-to-day activities of the Union. The majority of the executive had taken a decision that no political figures would participate in the Labour Day rally 2009. On 4th May 2009, members of the Labour Party – the defendants – successfully carried out a coup when they stormed the Union platform and took control of the proceedings and routed the Union’s executive.

- [29] The magistrate found that none of the defendants fell under the statutory exception in section 5 of the First Schedule which exempts the holding of meetings organised by a trade union for the celebration by trade unions of Labour Day. The magistrate further found that all of the appellants addressed a meeting in a public place at the V. C. Bird bust without the prior permission of the Commissioner of Police contrary to section 8(b) of the **Public Order Act**. Therefore, he found them guilty as charged.

- [30] The magistrates finding that all of the appellants addressed a meeting in a public place at the V. C. Bird bust without the prior permission of the Commissioner of Police contrary to sections 3 and 8(b) of the **Public Order Act**, is one which goes directly to the complaint against them. The underlying theme leading to the complaints against the appellants is that they did not have the permission of the Commissioner of Police to speak.

- [31] The Commissioner's denial of permission to speak was based upon the Labour Party's request to the Union and the Union's refusal to add names to the list of speakers the Union had submitted to the Commissioner to speak at its Labour Day meeting, when it sought his permission to hold the meeting and rally. This denial of permission to speak was flawed *ab initio*. This being a Labour Day event to be organised by the Union, there was no requirement as a matter of law, for the Union to seek permission from the Commissioner of Police to hold or organise the meeting. Likewise, there was also no requirement to submit a list of speakers or for permission to speak at the meeting or rally. This is an inevitable consequence of the express disapplication of the **Public Order Act**. A prosecution founded upon a breach of the **Public Order Act** in circumstances where it was expressly disapplied would be contrary to law.
- [32] In view of the disapplication of the **Public Order Act** to trade unions celebrating Labour Day activities, the real question is whether what transpired at the bust was a meeting or rally of the Union. If it were, as explained above, there would be no legal basis for the prosecution, predicated as it were, on the absence of permission by the Commissioner to speak at the meeting.
- [33] The evidence however demonstrates that although the Union had planned the celebration of Labour Day with a meeting and rally at the V. C. Bird bust, that never actually materialised. The Union's meeting never got off the ground. The meeting that took place was convened by Mr. Browne, who was not a member of the Union. He had called several speakers to the platform, including the other appellants. Mr. Browne even called on Mr. Joseph – the Union's secretary and Mr. Leonard to fall in line.
- [34] What was supposed to be a meeting of the Union, was essentially usurped and overtaken by the appellants to the extent that the Union's General Secretary had to remove its podium and hi-fi music system and leave the scene. What transpired was not a meeting of the Union to celebrate Labour Day so as to disengage the

application of the **Public Order Act**. While I note the appellants were not charged with convening a meeting, the evidence is clear that all the appellants spoke at the meeting without the Commissioner's permission.

[35] The magistrate's finding that none of the defendants fell under the statutory exception in section 5 of the First Schedule was clearly open to him on the evidence. The magistrate's further finding that all of the appellants addressed a meeting in a public place at the V. C. Bird bust without the prior permission of the Commissioner of Police contrary to section 8(b) of the **Public Order Act**, was a finding of fact. It cannot be said that there was no evidence to support the finding, or it was one which no reasonable magistrate could have reached. In **Peters v Peters**² the Court of Appeal held: (i) that where a magistrate whose function it is to make findings of fact has done so, and there is evidence which shows that his findings may be justified, it is not the function of the Court of Appeal to interfere by substituting its own view of the facts.

[36] Given the constraints attendant upon challenging factual findings, there is no basis for appellate interference. The appellants were rightly convicted of addressing a meeting in a public place without the prior approval of the Commissioner of Police. As stated in **Henderson v Foxworth Investments Ltd and Another**:³

".... the duty of the appellate court was to ask itself whether it was in a position to come to a clear conclusion that the trial judge had been 'plainly wrong'... . The phrase 'plainly wrong' can be understood as signifying that the decision of the trial judge could not reasonably be explained or justified. An appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. It follows that, in the absence of some other identifiable error, such as a material error of law, the making of a critical finding of fact which has no basis in the evidence, a demonstrable misunderstanding of relevant evidence or a demonstrable failure to consider relevant evidence, an appellate court would interfere with the findings of fact made by the trial judge only if it was satisfied that his decision cannot reasonably be explained or justified."

² (1969) 14 WIR 457.

³ [2014] UKSC 41.

[37] For the reasons above it is ordered that:

- (1) The appeal against conviction and sentence is dismissed.
- (2) The conviction and sentence are affirmed.

I concur.
Reginald Armour, SC
Justice of Appeal [Ag.]

By the Court

Chief Registrar