



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2019: 26

HARRISON ISAAC JR.

Appellant

-v-

FIONA MILLER
(POLICE SERGEANT)

Respondent

JUDGMENT

*Appeal against conviction in the Magistrates' Court
Use of an unlicensed motor cycle / section 52(2) of the Motor Car Act 1951
Reliance on a Formal Defect in an Indictment or Information*

Date of Hearing: 19 February 2020
Date of Judgment: 24 September 2020

Appellant In Person
Respondent Ms. Shaunte Simons for the Director of Public Prosecutions

JUDGMENT delivered by S. Subair Williams J

Introduction

1. I open with an acknowledgement of the delayed delivery of this judgment. At the close of the hearing of this appeal, I reserved my decision so to provide written reasons. I advised the parties accordingly. Regrettably, the Court file for this matter was not returned to me for judgment writing until Wednesday 16 September 2020 and the pending nature of the

matter was entirely forgotten during the interim period. This oversight was exacerbated by the Court closures spanning from March through to August 2020 on account of the COVID-19 Pandemic. For this reason, I apologize to the parties for the deferred disposal of this appeal.

2. On 6 September 2019 the Appellant was tried in the Magistrates' Court on Information 19TR03366 and convicted by Acting Magistrate Leopold Mills for the unlawful use of an unlicensed motor cycle, contrary to section 52(2) of the Motor Car Act 1951. Consequently, the Appellant was sentenced to a \$450.00 fine and three demerit points.
3. By Notice of Appeal filed on 13 September 2019, the Mr. Harrison Isaac Jr. appealed to this Court for an order to quash his conviction. The appeal was listed for a routine directions hearing on 7 November 2019 and a Notice of Hearing was sent to the Appellant by email from the Supreme Court Registry. However, the Appellant failed to appear before the Court on the listed date. Accordingly, the appeal was conditionally dismissed for want of prosecution by my Order of same date which allowed for the Appellant to show cause within a 7 day period as to why the appeal ought not to be dismissed.
4. Prior to being served with my 7 November Order, the Appellant corresponded with the Registry by his known email address. He stated his apology for having forgotten the fixture which was reset for mention on 9 January 2020 when he appeared before the Court and confirmed that he was in possession of the Record of Appeal ("the Record"). The appeal subsequently proceeded with both parties present on 19 February 2020.

The Evidence at Trial

5. At the trial the prosecutor called Acting Police Sergeant Dinell Bean as the sole witness for the Crown and Police Constable Craig Outerbridge was tendered to the Appellant for cross-examination. The Appellant gave evidence in his own defence.
6. A/PS Bean told the Court that on Tuesday 30 April 2019 at approximately 8:25pm in the area of North Shore Road and Radnor Roan in Hamilton Parish, he observed the Appellant riding an unlicensed red motor cycle into the Shelly Bay Market Place parking lot. The officer said that he called out to the Appellant for his attention but that he walked into the Market Place store without responding.
7. When the Appellant came out of the grocery store, A/PS Bean informed him that he was trying to get his attention before he entered the store and that his motor cycle was unlicensed. He said that the Appellant replied with words to the effect; "*Give me a break*" and that he told the Appellant that he does not give out 'breaks' for offences involving an unlicensed vehicle. A/PS Bean subsequently issued the Appellant with a violation ticket

for the offence of using a motor cycle without a valid licence, contrary to section 52(2) of the Motor Car Act 1951.

8. The Appellant cross examined A/PS Bean on his evidence with a series of non-leading questions about the officer's observations and the time at which the officer observed the Appellant in the Market Place area. The Appellant never challenged A/PS Bean under cross-examination on any part of his evidence given in chief. Unsurprisingly, the prosecutor did not re-examine A/PS Bean.
9. At the request of the Appellant, PC Outerbridge was tendered for the sole purpose of cross-examination. During his evidence he corroborated the testimony given by A/PS Bean. PC Outerbridge stated that he was in company with A/PS Bean and that he observed the Appellant get off of his motor cycle in the Shelly Bay Market Place parking area on the day in question. In cross-examining PC Outerbridge, the Appellant adopted the same approach of posing only non-leading questions about the officer's observations, without putting a contrary case in challenge to the charges or the Crown's case.
10. The Appellant subsequently gave his evidence on the stand. His only defence put forth was that the violation ticket issued against him wrongly noted the time of the offence as having occurred at 8:25 (as opposed to 8:25pm or 20:25). Acting Magistrate Mills' note of the Appellant's evidence is as follows [pages 10-11 of the Record]:

“I am Harrison Eugene George Nathaniel Isaac, Jr; I do admit that my bike CH 524 was unlicensed on Tuesday, 30 April 2019 and it was, in fact insured since October 2018;

The alleged offence is said to have occurred at 8:25 hours and I state I was not at The Market Place. I was at Rocky Lane, 12, at 8 a.m. until 6:45 p.m.; that is where I reside;

I saw the police after 20:00 hours in the evening of 30 April 2019; I observed the Police at the Market Place parking area facing Pizza House during that time; it was dark during that time; there were customers at the laundromat, at Pizza House and at the Market Place;

The police did engage me at about 20:15 hours as I exited the Market Place; P.C. Outerbridge was in the driver's seat and P.C. Bean was in the passenger seat. P.C. Bean stepped out of the vehicle, went to the trunk of the car while I spoke with P.C. Outerbridge to ask for a 'break' and he said he couldn't because P.C. was issuing the ticket; this was in the evening and not as 8:25a.m., everything happened at The Market Place and not at North Shore Road; the vehicle was not in use at 8:25 a.m. at any place in Bermuda on Tuesday 30 April 2019; I did not commit this offence at 8:25 a.m. as indicated on the ticket or along North Shore Road as indicated on the ticket;”

11. During the cross-examination of the Appellant, the following question-and-answer exchange is noted [pages 11-12 of the Record]:

“...

Question: The ticket refers to 8:25, yes?

Answer: Yes;

Question: Is there an indication of a.m. or p.m. on the ticket?

Answer: No; Not true that on 30 April 2019 I was riding my bike; my argument is about the evening versus the morning;

Question: You did agree to having committed the offence?

Answer: Yes; I admit that my bike, on 30 April 2019, was unlicensed; but I'm not guilty of the offence because I wasn't using my bike at 8:25 a.m. on 30 April 2019;

Question: You didn't agree with what the officers said, did you?

Answer: I maintained that the incident occurred in the evening, not in the morning.”

Analysis and Decision

12. The Appellant relied on a sole ground of appeal which was pleaded as follows:

“Police perjury testimony about location date and time of offence alleged”.

13. In my judgment, it is not open to the Appellant to argue on the evidence that the police witnesses perjured themselves. At no point did the Appellant ever suggest at trial, whether through cross-examination of the Crown witnesses or through his own *vive voce* evidence, that the police officers were being untruthful or that he did not commit the offence for which he was before the Court of first instance.

14. The Appellant has attempted to mount a defence and a ground of appeal out of the fact that the violation ticket did not expressly state that the offence occurred at 8:25pm and not 8:25am. This defence is wholly without merit. Section 488 of the Criminal Code addresses the law on formal defects in an indictment:

“Formal defects in indictment

488 (1) *An indictment is not open to objection by reason of the designation of any person by a name of office or other descriptive appellation instead of by his proper name, nor for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence, nor for stating imperfectly the time at which the offence was committed, nor for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.*

(2) *An objection to an indictment or to a count in an indictment, for a defect apparent on its face, shall be taken by motion to quash the indictment or count before the accused person enters a plea, and, after the accused person has entered a plea, only by leave of the court before which the proceedings take place.*

(3) *The court before which an objection is taken under this section may, if it considers it necessary, order the indictment or count to be amended to cure the defect.”*

15. I find that the Appellant in this case was in search of a technical point under which he could escape liability for an offence that he admittedly committed. If he had a sincere uncertainty on any of the particulars of the offence with which he was charged, he could have sought further particulars of the offence against him. This is permitted by section 490 of the Criminal Code which provides:

“Delivery of particulars of matters alleged in indictment

490 *The Supreme Court may, in any case, if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment, and may adjourn the trial for the purpose of such delivery.”*

16. (By virtue of section 491 of the Criminal Code, the sections I have cited, namely sections 488 and 490, are also applicable to trials before a Court of summary jurisdiction i.e. the Magistrates’ Court.)
17. The overall purpose of the delivery of particulars of an offence is to enable the accused person to have enough information to understand the case and the charges against him. In this case, the omission of an “a.m.” or “p.m.” annotation to describe the time of the offence was of no real importance and could not have deprived the Appellant of a sufficient understanding of the case and allegations against him.

18. In my judgment, the conviction is sound and was supported by strong evidence against the Appellant. For these reasons, this appeal must fail.

Conclusion

19. The appeal is dismissed and any stay of the Appellant's sentence is hereby lifted.

Dated this 24th day of September 2020

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE