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Her Majesty's Attorney General

v -

Barry Shelton

This is an appeal by Mr. Barry Shelton against his conviction by the Assistant Magistrate on the 7th October, 1980, of obstructing the police in the execution of their duty and being drunk and disorderly at Police Headquarters. The events took place as far back as the 22nd May, 1980. After some delay due to the submission by the defence of no case to answer inasmuch as the first offence had been committed in the Parish of St. Lawrence, and by an oversight, quite understandable, however, due to the Parochial system of charging offenders, the appellant had in fact been charged by a Centenier of St. Helier, the case finally got off the ground on the 1st July, 1980. Why two busy Centeniers should be required in such matters can only be explained by the present state of the law as to the charging of offenders. There was an inordinate number of further remands until at last on the 19th August, three months after the first remand on the 22nd May, some evidence was heard and the prosecution evidence was completed. On the 16th September, 1980, counsel for the defence, Mr. Benest, who appeared before us today, submitted that there was no case to answer on both charges. The Assistant Magistrate rejected the submissions and the appellant was then heard. On the 19th September, 1980, the other defence witnesses were heard. On the 7th October, P.C. Martin and Centenier Piasecki were heard and P.C. Bonney, the main police complainant, and P,C. Thorpe, the other police officer involved in the first incident, were recalled. Counsel made his final submissions and the Assistant Magistrate

victed the appellant nearly five months after the incidents which were correctly described by counsel in his own plea in mitigation as, and I quote, "trivial", but which, nevertheless, have required the transcribing of over 150 pages of depositions and submissions for the purposes of this appeal. This was not a difficult case and we are at a loss to understand why it was not possible to dispose of it more expeditiously.

Mr. Benest has submitted to us that even if the events on Victoria Avenue happened substantially as claimed by the police, they did not amount in law to an obstruction. We set out briefly the facts of the occurrence there. The two police officers were about to take the driver of a car, in which the appellant and his brother were passengers, to Police Headquarters because they suspected that the driver, Mr. A.T. Nugent, was under the influence of drink. They had stopped the car in the course of a routine check on vehicles at about 3.40 a.m. on the 22nd May. The appellant, his brother and Mr. Nugent had been drinking together for quite some time during the previous evening, if not since 1 a.m. when they went up to Mr. Nugent's flat. Later, all three decided that Mr. Nugent, who was found himself after an examination to have a blood alcohol content of 170 milligrams per millilitre, should drive the two Sheltons home after one of them had tried unsuccessfully to obtain a taxi. According to P.C.Bonney and P.C. Thorpe, whose evidence the Assistant Magistrate accepted on this point, Mr. Nugent said, when they stopped him, that he was driving because the other two passengers were too drunk to do so. The defence has denied any such conversation. In this connection we note the evidence of Mr. Anthony Shelton who said that he had drunk five or six drinks before 1 o'clock and that his brother had had possibly two more. He had been drinking vodka and his brother had been drinking lager.

Mr. Nugent was very co-operative with the police and moved over into the passenger seat. The appellant and his brother got out. P.C. Thorpe sat in the driving seat and tried to start the ignition. He had

across to close the driver's door as he was going to drive the police car back to Police Headquarters. According to him, he was prevented from doing so by the appellant placing himself in the way and taking hold of the open door. The appellant, according to him, was abusive, unsteady on hi feet, smelt of liquor and his speech was slurred. All ,of these allegations were denied by the appellant and his witnesses. P.C. Thorpe's evidence did not accord completely with that of P.C. Bonney but was substantially the same. Obstructing the police is doing any positive act which makes it more difficult for the police to carry out their duties. One must take a common sense and robust view of this offence; the police cannot be expected to act with one hand tied behind their backs. Accepting the police evidence for the moment, and this therefore being a matter of law, I am not prepared to rule that counsel's submissions are correct on this point, and that given the facts as alleged by the police, no offence of obstruction had been committed. In the course of his address to us, counsel drew our attention to two matters in the Assistant Magistrate's notes, one of which has given us some concern. The first was an "aide-memoire" which the Assistant Magistrate prepared for himself at the conclusion of the evidence including the defence evidence but before he was addressed by Mr. Benest. We say that because at the bottom of page 2 of those notes is a reference to the Jersey law which the Assistant Magistrate says he will read, and we conclude from that entry that in fact he had prepared his notes as an "aide-memoire" in arriving at his decision before counsel had addressed him. That was not an improper thing to do and it enabled the Assistant Magistrate to follow counsel's address more closely and to see whether in fact counsel had made submissions which would lead him to change his mind. The other matter is more important. At the bottom of page 3 of some other notes which the Assistant Magistrate made in the course of the trial and which were in fact made on the 19th August, 1980, at the conclusion of the prosecution case, he refers to a certain type of Scotsman in the following terms: "1. No evidence of fabrication or exageration

Police have not strained themselves to make it easy for Shelton but his conduct typifies the sullen, drunken, pedantic Scotsman." He initialled those notes and it rather looks as if it's 12.50 a.m. but I think it might well be p.m. on the 19th August, 1980. Counsel for the appellant, very rightly, laid stress on the sentence regarding the opinion expressed there of the appellant and suggested that that was a summing up by the Assistant Magistrate of the opinion he had formed at that time of the appellant's character and that therefore, unwittingly, the Assistant Magistrate all unconsciously, allowed that opinion to colour his weighing up of the appellant's and his witnesses' evidence when he came to decide whether the offence had been proved or not. On the other hand, Mr. Olsen for the Attorney General has asked us to look at that offending sentence in the context of the whole of the paragraph and even wider, in the context of the Assistant Magistrate's overall conduct of the case. We are going to take that view because we think that what the Assistant Magistrate was saying there in that paragraph was that he had heard the police evidence and although, on the one hand, the police were not leaning over to help the appellant, on the other hand, he appeared to the Assistant Magistrate to typify certain attributes of a type of Scotsman, which the Assistant Magistrate must have had in mind as the kind of person whom he had had previous;y before him. That was not indeed, condemning the appellant, it was merely a comment to offset the fact that he had already noted that the police were not, as I have said, leaning over themselves to assist the defence. Perhaps it would have been better if he had not made it but we are satisfied that taking the Assistant Magistrate's conduct as a whole of the case and looking at all of his notes that that comment did not, and cannot properly be said to have coloured his evaluation of the defence evidence.

Now as for the evidence itself, the Assistant Magistrate was entitled, we find, to accept the police's evidence if he so wished. There was no

doubt that the appellant and his two witnesses had been drinking quite heavily although one, the appellant's brother, managed to walk back to St. Helier. There was sufficient evidence on which the Assistant Magistrate could convict and the appeal against conviction on the first count is dismissed. Similarly, we are satisfied that as regards the evidence of the offence at Police Headquarters, the Assistant Magistrate had sufficient evidence upon which he could properly convict if he accepted the evidence mainly of the experienced police sergeant on duty at the time. He did so and we cannot say that he was wrong. This appeal is dismissed also.

One of the complaints before the Assistant Magistrate was that counsel had not been given particulars by the Centenier of St. Lawrence of the charges in respect of the incident in that parish. If that is so, then the omission was wrong because Centeniers must give the defence all the necessary information before the Court sits in order for the accused to know what he has to meet.

We have two further observations to make. In the course of the proceedings before the Assistant Magistrate, counsel was allowed far more latitude in cross-examination than the case warranted. Whilst not wishing to inhibit the defence of an accused person, repetitive cross-examination is to be discouraged. And if it is to be suggested to the police witnesses that a particular officer had been involved in a numbe of prosecutions similar to the one being considered and that, therefore it followed, by inference, he specialised in such cases, then each occurrence should be detailed to the officer so that he might have the opportunity of commenting on them. General assertions are insufficient.

We noticed also that between the hearings of some of the evidence on the 19th August, 1980, and when the case was called again for further evidence on the 16th September, transcripts appear to have been ordered. And while we do not wish in any way to criticise the Assistant Magistrate's procedure in his Court, it does appear to us that

relatively trivial cases of this nature do not merit the taking of transcripts except in the most exceptional circumstances and particularly where the matter is clearly within the jurisdiction of the Magistrate himself.

Lastly, we have set out the history of this case at some length because we wish to show that the appellant was given every latitude by the Assistant Magistrate. However, the length of time which the case took up was due to a great extent to the prolonged, and as we have already said, in some cases repetitious cross-examination of counsel when he should have been stopped by the Assistant Magistrate. It cannot be said too clearly that in the administration of justice there must be a fair balance maintained all the time between the interests of the public and that of the accused.

In our opinion, apart from the point of the Magistrate's note and comment which I have already mentioned, this appeal is entirely without merit. It is right therefore, that the Court should express its disapproval by awarding costs to the Attorney General and had it not been for the one point of the Magistrate's comment, we would have made those costs sufficiently high to compensate in some measure for the unneccesary cost to the public of the lengthy transcript, having regard to our remarks concerning the conduct of the defence in the Court below. The appellant wil therefore pay the sum of one hundred pounds costs.