SANCHEZ v MAURICIO

Supreme Court
Bacon, C.J.
19 October 1951

Crime — obstructing a police officer in the execution of his duty — Police Ordinance, 1949, s. 31. — *Criminal Offences Ordinance*, s. 256.
Police — duties of police officers — exercise of discretion.

The respondent, a constable in the Gibraltar police, gave the appellant, the driver of a bus, instructions to move his bus in compliance with parking restrictions. The appellant refused. The instruction was repeated twice and each time the appellant refused. There was an altercation, during which the respondent warned the appellant that it was an offence to obstruct the police. The appellant was eventually charged with and convicted of obstructing a police officer in the execution of his duty contrary to s. 31 of the Police Ordinance. He appealed against conviction.

Held: (i) There is no absolute obligation on a constable to adopt in every case the most extreme measures permitted by law.

(ii) To establish the offence, it must be shown that the police officer was acting in the execution of an actual duty.

(iii) Obstructing includes any substantial form of deliberate hindering, impeding or preventing.

Note. Section 31 of the Police Ordinance, 1949, was replaced by s. 256 of the Criminal Offences Ordinance (Cap. 37, 1974 Reprint).

Cases referred to in the judgment.

R. v Prebble, (1858) 1 F. & F. 325.
Duncan v Jones, [1936] 1 K.B. 218.
R. v Sutherland, (1944) 1 W.W.R. 529
R. v Spencer, (1863) 3 F. & F. 857.
Pankhurst v Jarvis, (1909) 22 Cox 228.
Despard v Wilcox, (1910) 22 Cox 258.
Betts v Stevens, [1910] 1 K.B. 1.
Bastable v Little, [1907] 1 K.B. 59.

Appeal

This was an appeal to the Supreme Court against conviction in a court of summary jurisdiction on a charge of obstructing a police constable in the execution of his duty.

J.E. Alcantara for the appellant.
L.J. Vasquez for the respondent.

26 October 1951: The judgment, of which the following is part, was read—

(After a detailed examination of the evidence, the judgment continues—)

The whole of that altercation occupied several minutes. During its later stages the appellant, seeing that the number 6 bus had now vacated its parking-place, announced that he was going to change his route-number to number 6 (his bus being licensed to travel on either route number 5 or route number 6), mounted his bus, did so, and again alighted. The respondent then asked for his identity card, whereupon the appellant, not having it with

him, produced his certificate of competence as a driver.

Being detained by the appellant's refusal to move his bus, the respondent was unable to attend to his general duties. The bus-queue broke, people gathered round to watch what was happening, and the supervision of traffic was perforce neglected. The respondent commenced to arrest the appellant but, on the advice of Station Police Sergeant Summerfield who happened to be passing while not on duty, he desisted from arresting the appellant, thus avoiding further disorder, and reported the incident instead.

At no time during the incident did the respondent inform the appellant that he would be summoned for a traffic offence, nor was he ever so summoned.

At the conclusion of the affair the appellant drove his bus away with passengers who had entered it after the route-number had been changed.

Counsel for the appellant submitted that, even though some such facts as I have stated might be found to be proved, a conviction for obstructing the police could not properly follow. It was, he argued, the respondent's right and duty to cause the appellant to be summoned for the offence of parking his bus on a prohibited spot, if that is what the appellant did; but, by refraining from so doing and ordering the appellant to remove the bus, he himself "created the alleged offence of obstruction" and so cannot complain of having been deliberately obstructed.

I find it impossible to accept that contention. The true view in such cases as this is as follows.

Section 12 of the Police Ordinance, 1949 lays down the duties of the Police Force in very wide terms. A constable acting within the scope of that section and also conforming to any lawful instructions given to him by proper authority is acting "in the execution of his duty" within the meaning of s. 31 of the Ordinance. By the same token, a constable who misuses his powers or acts in excess of his authority is personally liable in law.

But no rule of law imposes on a constable an absolute obligation to adopt in every instance the most extreme measures which the law permits. An absolutely strict reading of the combined effect of ss. 12 and 13 of the Ordinance would, for example, produce the absurd result that a constable was obliged by law to apprehend and bring before justices a person of unassailable reputation who in a moment of distraction or forgetfulness had left his car protruding a foot or two beyond a parking-line. The execution of police duties must always be moderated by some measure of discretion dictated by the internal administrative instructions of the Force. Absolute rigidity would defeat the very object for which police exist, by undermining that respect for the authority of the law which it is a fundamental duty of the police to do their utmost to inspire. Sections 12 and 13 of the Ordinance are the basic code of the limits to which a constable's lawful duties extend, not mandatory provisions eliminating discretion and obliging him to use his powers to the full extent on all occasions.

Thus, in the absence of any scrap of evidence of police administrative instructions to the contrary, it cannot be said that, by reason of the general law alone, it was the respondent's bounden duty to inform the appellant that he would be reported with the object of his being charged with a traffic offence, or (much less) to arrest him for one, the moment the appellant had brought his bus to a standstill at a prohibited place. The respondent cannot be said to have put himself out of court for the purposes of this case by refraining from adopting either of those courses.

The question is, then, whether the subsequent events establish that the appellant committed the very different offence with which he was ultimately charged.

In order to establish this offence, commonly known as obstructing the police, three things must be proved: first, that the constable was then and there acting in the execution of his duty; secondly, that he was obstructed, either temporarily or permanently, from carrying out some duty which he was seeking to perform; and, thirdly, that it was the accused person who so obstructed him.

As regards the first of those elements, the duty must really exist. It is not open to the constable to rely either on some imaginary obligation or on some imaginary danger of a breach of the peace or of a public disorder. Three reported cases illustrate the distinction. In *R. v Prebble* [1], where there was an indictment for assaulting a constable in the execution of his duty but a conviction for common assault only, Bramwell, B., said: "The people were doing nothing illegal, nor contrary to any Act of Parliament, and therefore the constable was not acting in the execution of his duty as such, although what he did may have been very laudable and proper. It would have been otherwise had there been a nuisance or disturbance of the public peace, or any danger of a breach of the peace". That principle was expressly approved in *Duncan v Jones* [2] in which it was held that, since the police had had reasonable grounds for fearing, and had feared, a breach of the peace in the event of the accused person doing what they ordered her not to do, it had become their duty to order her not to do it. On the other hand the Canadian case of *R. v Sutherland* [3] was one in which the police had ordered a street musician to move on, which he refused to do; but there was no evidence as to the traffic being interfered with if he stayed where he was; it was accordingly held that there was no duty on the police to order him to move on and therefore no obstruction of them "in the execution of their duty". Similarly, if the duty alleged consists of acting on suspicion that a crime has been committed it is necessary to prove the existence of reasonable grounds of suspicion, as was held in *R. v Spencer* [4].

As for the nature of the "obstruction" which constitutes the second element of the offence, several kinds are recognized by law and any one of

---

1 (1858) 1 F.& F. 325.

2 [1936] 1K.B. 218, per Lord Hewart, C.J., at p. 223.

3 (1944) 1 W.W.R. 529.

4 (1863) 3 F. & F. 857.

them suffices. There may be physical force used against the police, as in *Pankhurst v Jarvis* [1]; or a merely verbal refusal to leave some part of the highway, as in *Despard v Wilcox* [2]; or a persistence in carrying out some act which the police have then and there forbidden, as in *Duncan v Jones*; or a warning to a person who is in the act of committing an offence, given with the object and the result that the police who are seeking to obtain evidence of that offence are prevented from so doing, as in *Betts v Stevens* [3]; or a wilful deception of a constable who is seeking information which might lead to the conviction of the perpetrator of a crime, or a threat directed at a constable with the object of preventing him from carrying out the duty on which he is engaged, as indicated in *Bastable v Little* [4]. Thus it may be said that obstructing includes any substantial form of deliberate hindering, impeding, or preventing.

As regards the third element of the offence, the requirement is obvious: it must be proved that it was the accused who by his personal act, refusal to act, or intervention placed or caused to be placed an obstacle in the way of the police.

It is clear that those three elements were proved in the present instance.

The respondent's duties included that of keeping pedestrian and vehicular traffic in good order, and in particular that of enforcing the proper management of buses in relation to the parking-places lawfully marked out. It was perfectly reasonable to anticipate, as the respondent did, that public disorder might well ensue if the buses did not keep to their allotted stations, thereby enabling orderly access to them by the public in queues and avoiding congestion among the buses themselves and other vehicles passing over the highway. In the result, his anticipation was proved correct, for a certain amount of disorder actually occurred when the queues broke up. Worse disorder might have occurred, since it was apparent that the appellant was bent on obtaining for his bus an advantage denied to those who observed the regulations properly. In ordering the appellant to remove his bus from the non-parking space between the two blocks of parking-places he was acting in the execution of his duty. The fact that he had elected to give the appellant an opportunity of immediately atoning for the traffic offence which he had momentarily committed did not make it any the less his duty to procure the removal of the bus. And the appellant's repeated refusals — one of which would have been enough — plainly constituted an obstruction of the respondent by him as understood in law.

(The Chief Justice went on to deal with a further submission.)

Appeal dismissed.

---

1 (1909) 22 Cox 228.
2 (1910) 22 Cox 258.
3 [1910] 1 K.B. 1.
4 [1907] 1 K.B. 59.