IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2015 HCV 04405

Petty Sessions (Criminal) Appeal

For the Parish of St. James

BETWEEN	**LENNOX GAYLE**	**APPELLANT**
AND	**REGINA**	**RESPONDENT**

Criminal Law- Constabulary force Act -Assault- Resisting arrest- Whether arrest lawful-Whether duty to give name-Noise Abatement Act -Whether reasonable cause to suspect

Mr Norman Godfrey instructed by Brown, Godfrey & Morgan for the Appellant

Mrs Sahai Whittingham-Maxwell instructed by the Director of Public Prosecutions for the Respondent

Heard: 9th February and 23rd February, 2017

IN CHAMBERS

BATTS J,

[1] This appeal was heard in Chambers pursuant to Section 23 of the **Justices of the Peace (Appeals) Act**. The Appellant was convicted on the 24th August 2012 after a trial before Her Honour Ms. Winsome Henry. He had been charged on Information with Assaulting a Constable contrary to Section 30 of the **Constabulary Force Act** and with Resisting Arrest contrary to the same section. His plea was not guilty. The accused was convicted on both counts and he was

fined $2,000.00 or ten days at hard labour on each Information. The learned Magistrate provided written reasons for her decision.

[2] The Appellant's grounds of appeal were filed on the 3rd September 2012 and are as follows:

> *"(1) The Petty Sessions Court erred in law in rejecting the no case submission made on behalf of the Appellant that there was no evidence showing that he had committed any offence which empowered the police to arrest him.*
>
> *(2) The Petty Sessions Court misdirected itself when it held that the Superintendent of Police did not arrest the Appellant only under the Noise Abatement Act but also for Improper Conduct for the following reasons:*
>
> *I. The Prosecution withdrew the charge of Improper Conduct.*
>
> *II. There is no evidence that the Appellant was the owner of the premises or the person hosting the event, and thereby in breach of the Noise Abatement Act.*
>
> *III. The Appellant was not charged with the offence of Indecent or Abusive Language.*
>
> *(3) The Court failed to assess or to properly assess the material inconsistencies between the testimony of Superintendent Maurice Robinson and Constable Curline Campbell and their statements by way of omissions.*
>
> *(4) The conviction is not supported by the evidence."*

[3] The Appellant and the Respondent each filed skeleton arguments and bundles of authorities. Each also made oral submissions before me. The Appellant in skeleton arguments dated the 5th February 2015 relied also on the following additional grounds of appeal:

"(5) The Petty Sessions Court failed to appreciate the common law principle that a citizen has no legal duty to answer a policeman's questions.

(6) The Petty Sessions Court misdirected itself when it directed that "Before making an arrest for improper conduct the Superintendent does not have to establish that the Defendant is the proprietor as that was never the Appellant's position as regards improper conduct."

[4] Appellant's counsel urged the following in his skeleton arguments:

a) The evidence of the pointing out of the Appellant as the proprietor by Constable Campbell is inadmissible hearsay.
b) Although the police have authority to detect and prevent breaches of the peace, or threatened breaches of the peace, that in itself is not authority to falsely imprison the citizen.
c) The police have a duty to inform the citizen why any liberty is being constrained.
d) The police had a duty to inform the Appellant why his name was being requested.
e) The police had a duty to inform the Appellant of the breach he was seeking to prevent.
f) The police erred in thinking that he had a right to arrest the Appellant because the Appellant refused to give his name.
g) The learned Resident Magistrate erred when she relied on the fact that the Superintendent said he also arrested the Appellant for improper conduct.
h) In order to arrest for improper conduct it has to be established that:
    (i) The premises is licensed under the **Spirit License Act**
    (ii) The person in the face of the police is behaving in a drunken, disorderly or improper manner

There was no evidence in support of (i) or (ii) above.

i) The prosecution withdrew the charge of improper conduct and there was never a charge of breach of the **Noise Abatement Act**.

j) The learned Magistrate failed to take account of material inconsistencies between the written statement and oral testimony as follows:

a) The Appellant's alleged admission of being part of the business. The learned Magistrate erred when she found it was not material although the prosecution's case was predicated on a breach of the **Noise Abatement Act**.

b) The words attributed to the Appellant by Constable Campbell when giving oral evidence were not in her written statement. The learned Resident Magistrate also erred when she treated it as immaterial.

k) Inconsistencies cannot be cured by conjecture. Any resolution must come from the mouth of the witness.

[5] In oral submissions the Appellant's counsel urged additional points as follows:

a) When a petty session offence is involved there is no power of arrest unless the offence is committed in the presence of the constable, otherwise he must have a warrant.

b) Section 18 of the **Constabulary Force Act** is specific as to the offences in respect of which an arrest without warrant can be made. None of the offences alleged in this matter are listed there. Section 15 also contains relevant limitations on the power.

[6] The Respondent's skeleton arguments on appeal were filed in this Court on the 16th September 2015 and are summarized thus:

a) In response to Appellant's grounds (2) and (6) [invalid arrest because there was no "improper conduct"] it was submitted that Section 58(a) of the **Spirit Licence Act** does not speak to proprietorship of the

premises. The offence required that there was reasonable grounds on which a reasonable person could find that the accused displayed behaviour in contravention of the section; and, the officer must personally have been of the view that those objective grounds existed at the time of arrest. Further the learned Magistrate had ample evidence to support her observation that,

> *"The prosecution withheld (sic) the charge for improper conduct, although the evidence discloses that the police had reasonable cause to arrest and charge the Appellant for abusive behaviour."*

The Respondent submitted further that, although there was no evidence of a specific licence for the premises in question, no permitted hours for licensed premises extend beyond midnight. The incident occurred at 1:00 a.m. and it was therefore for the Appellant to show some business connection to the premises.

b) In response to the Appellant's 5th ground [No duty to answer policeman's question] the Crown accepted that there was no such general duty. However a failure to maintain certain facts when first questioned may lead to adverse inferences. A refusal to respond does not preclude an officer pressing on with his enquiry. The Magistrate was entitled to infer that the Appellant was not unconnected to the event taking place. Further, it was confirmed in cross-examination that the Back Stage Bar and Grill was licensed under the Act. Since Section 59 of the **Spirit Licence Act** gives authority to the police to request a person's name and address, and makes it an offence to fail to respond, the Appellant had a statutory duty to respond to the enquiry.

c) In response to the Appellant's ground 3 [material inconsistencies] it was submitted that there was no inconsistency which discredited any of the Crown witnesses. Although Superintendent Robinson had omitted from his statement that the Appellant indicated to him he was

"a part of the business", there was evidence that the first responding officers had pointed out the Appellant, to him, as the proprietor and that it was not the first such function the Appellant had hosted. The learned Magistrate's conclusions were therefore amply supported by credible evidence. As regards Woman Constable Campbell's omission from her statement of the later allegation that the Appellant used the words "pussy move" it was submitted that in evidence the Woman Constable stated that she could not say whether the words were "significant and important". It was submitted that it was immaterial whether the officer included the precise expletives in her statement. It was submitted that where a case turns on the witness' reliability and where on one possible view of the facts there is evidence on which the fact finder could come to a conclusion of guilt, the court will not overturn the conviction; **R v Galbraith** [1981] 2 All ER 1060 was relied upon. There was no duty on the trial judge to "comb through the evidence to identify all the conflicts or discrepancies" **R v Diedrick** (1991) SCCA No 107/89. It was further submitted that there was ample evidence to support the Magistrate's findings notwithstanding any discrepancies.

d) In response to the Appellant's grounds (1) and (4) [insufficient evidence to support a conviction] it was submitted that the learned Magistrate was correct to dismiss the submission of no case to answer. The Superintendent's evidence is that he did not touch the Appellant prior to advising him of his intent to arrest him. There was sufficient evidence to support an arrest for an offence under the **Noise Abatement Act**. In any event the Appellant also committed an offence under the Spirit Licence Act when he failed to give his name and also committed an offence under the **Town and Communities Act** when he uttered expletives. As regards resisting arrest, the Respondent submits that the Appellant did not at trial or here deny that there was physical resistance to the arrest. If therefore the arrest was lawful the

Appellant is guilty of resisting arrest and assaulting a constable in the execution of his duty.

[7] In the course of the reasons to follow I may not refer to all the cases cited but counsel should know that I am deeply indebted for their industry and assistance. Having considered the law on the matter, it is clear to me that the learned Resident Magistrate's decision ought not to be disturbed. There was before her ample evidence to support a conviction for the offences for which the Appellant was charged.

[8] The several grounds of appeal notwithstanding, it is manifest that, if the arrest of, or attempt to arrest, the Appellant was lawful, he would have no basis to resist arrest or to defend himself by assaulting the constable. Conversely, the officer would not be acting in the execution of his duty if he were effecting an unlawful arrest. Convictions for assault in the execution of duty and resisting an arrest would not stand. This appeal therefore turns on whether or not the arrest was lawful.

[9] It is safe to say that the arrest occurred as a result of a series of events beginning with a report being made to the police about a breach of the **Noise Abatement Act**. The Appellant refused to give his name, refused to answer and walked away, after he was asked certain questions by the police consequent on the report. Counsel for the Appellant argued that a person is generally under no legal duty to answer a policeman's questions. I agree. I also agree with the submission that any effort in this case to rely on the **Spirit Licence Act**, to support the right of the constable to demand the name of any person found on any licensed premises, must fail. This is because there is no credible evidence that the premises were so licensed or that the police addressed their mind to that at the time of the arrest . The Appellant is also correct that in this case his conduct subsequent to the arrest cannot be used to justify the arrest.

[10] The relevant sections of the **Spirit Licence Act** on which Counsel for the Respondent sought to rely are sections 58 and 59. Section 58 provides that,

> *"Every person who shall be guilty of—*
>
> *(a) drunkenness, or other disorderly or improper conduct in any part of a licensed house; or*
>
> *(b) engaging in any unlawful games or gaming in a part of any licensed house; or*
>
> *(c) being found on any licensed premises after the hour for closing the same, unless such person be employed on the premises or have lawful business there, the proof of such employment or such lawful business to lie on the party accused,*
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> *shall for every offence be liable on summary conviction to a penalty not exceeding three hundred dollars, or be imprisoned in any prison with or without hard labour for a period not exceeding thirty days."*

Section 59 further provides that,

> *"(1) Any constable may demand the name and address of any person found on any licensed premises during the period which they are required to be closed, and, if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or evidence of the correctness of the name or address so given, apprehend him without warrant, and carry him as soon as practicable before a Magistrate.*
>
> *(2) Any person required by a constable under this section to give his name and address, who fails to give the same; or gives a false name or address, or gives false evidence with respect to such name and address, shall be guilty of an offence and on summary conviction be liable to a penalty not exceeding two hundred dollars.*
>
> *(3) Every person who by falsely representing himself to be a traveller or lodger, buys or obtains, or attempts to buy or obtain at any licensed premises any alcoholic liquor during the period which such premises are or should be closed, shall be guilty of an offence and on summary conviction be liable to a penalty not exceeding two hundred dollars."*

Both the abovementioned sections require that the premises in question be licensed premises. Again, no evidence was advanced that the premises were so licensed. Therefore the prosecution's effort to rely on the Spirit Licence Act fails as they have failed to establish that core element.

[11] It is perhaps appropriate to discuss the law on what amounts to reasonable cause to arrest. **Hicks v Faulkner** [1881-85] Aller Rep 187 is the locus classicus on the meaning of reasonable and probable cause. In a suit for malicious prosecution the evidence before the jury demonstrated that the plaintiff had been acquitted of the criminal charge. Baron Huddleston gave directions to the jury to the effect that if they accepted that the defendant honestly believed the state of affairs to be true (even if due to a "treacherous memory") he should not be found liable . On appeal to Hawkins J the directions were upheld. In the course of his judgment Justice Hawkins said, at page 191, :—

> *'I should define reasonable and probable cause to be an honest belief in the guilt of the accused, based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. <u>There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly such secondly-mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as to amount to reasonable ground for belief in the guilt of the accused</u>.'* (Emphasis added)

On further appeal the Court of appeal upheld the decision of Justice Hawkins and approved the Baron's direction to the jury. That definition of

reasonable and probable cause received approval in the House of Lords in **Herniman v Smith** [1938] 1 All ER 1 and in the Court of Appeal of Trinidad & Tobago in more recent times **Irish v Barry** [1965] 8 WIR 177. The passage cited was recently applied in this jurisdiction by Anderson J ,see **Delroy Thompson v The Attorney General of Jamaica and Detective Douglas Taylor** [2016] JMSC Civ. 78. It is appropriate to remind ourselves that the Constitution of Jamaica at section 14(1)(f)(i) allows for the deprivation of liberty by arrest or detention:

> *"for the purpose of bringing him before the competent legal authority on reasonable suspicion of his having committed an offence".*

[12] The Appellant remained silent when asked his name and, as the Magistrate found, attempted to walk away. This was done after the superintendent brought to the Appellant's attention that music was being played too loudly (a breach of the **Noise Abatement Act**) and asked him his name. Given the fact that the superintendent had received information from a credible source (a fellow constable) that the Appellant was the proprietor (or the person responsible) and, that the Appellant declined to answer any questions and was walking away , there was sufficient evidence to support a finding that the superintendent had reasonable grounds to arrest . The superintendent informed the Appellant that he was being arrested for breach of the **Noise Abatement Act**. The Respondent's case is made even stronger because the evidence before the learned Magistrate was that the breach of the **Noise Abatement Act** was in progress at the time of the arrest. In this regard it matters not for present purposes that the superintendent may have been in error in thinking that the Accused was in breach of the **Noise Abatement Act,** provided his belief was honestly held on reasonable grounds.

[13] The learned trial judge rejected a submission of no case to answer. The well-known case of **R v Galbraith** [1981] 1 WLR 1039 is instructive on how a judge should approach submissions of no case to answer. I will reiterate the salient points. Where the judge concludes that the prosecution's evidence taken at its highest is

such that a jury properly directed could not properly convict upon it, it is his duty upon a submission being made, to stop the case. However, where the prosecution's evidence is such that its strengths or weakness depends on a view being taken of matters which are generally speaking within the province of the jury; and where one possible view of the facts is that the evidence was such that a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the trial to proceed .It is I think manifest that there was ample evidence upon which a jury could properly convict. The magistrate was entitled to reject the submission of no case to answer.

[14] Counsel for the Appellant submitted that for offences of the nature with which we are concerned the police can only lawfully arrest without a warrant if it is committed in his presence. Counsel for the Respondent helpfully pointed out that it was accepted that on the night in question a breach of the **Noise Abatement Act** occurred and was in progress at the time the police arrived .The breach was continuing at the time of the arrest. Counsel submitted that because the loud music continued even after the police arrived a breach of law continued in their presence. There was evidence from which the learned Magistrate could so find. The information provided to the superintendent and the conduct of the Appellant support a conclusion that the officer had an honest belief based on reasonable grounds that the Appellant was responsible for the breach of the Noise Abatement Act which was in progress. If the constables had reasonable cause to arrest the Appellant he was not entitled to assault the constable or resist during the process of the arrest. It matters not that the offence for which the Appellant was arrested was not the one for which he was ultimately charged.

[15] The cases cited by counsel for the Appellant are distinguishable. In **R v Solomon Henry** (1967) 10 JLR 237 the constable was in plain clothes when he tried to arrest the accused and there was no evidence that the accused knew that he was a constable. In **R v Sylvia Reid (1969) 11 JLR 284,** a very short report**,** the accused attempted to hit the constable with a stone while he tried to arrest the daughter of the accused. The trial judge in that case found that the constable

was acting without lawful excuse. The Court of Appeal decided that the accused was entitled to prevent the constable from so acting. The issue was whether an "attempt" to hit the officer with a stone constituted excessive force. In **R v Owen Sampson** (1954)6 JLR 292 a pivotal part of the case turned on the construction of the phrase "*found committing*" in reference to Section 18 of the **Jamaica Constabulary Force Law**, which was in force at that time. Interestingly, the Court of Appeal noted that a constable has power at common law to arrest without warrant on reasonable suspicion of a felony having been committed, but has no power to arrest for a misdemeanour, unless a breach of the peace has been committed in his presence or there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence. The Court of Appeal, in finding that the arrest was lawful, decided that where the offence was punishable upon summary conviction (as is an offence under the **Noise Abatement Act**) the constable was entitled to arrest the accused without warrant. The court relied on power conferred by Section 18 of the **Jamaica Constabulary Force Law** [now Section 15].The decision supports the case for the Respondent. In **D v DPP** [2010] EWHC 3400 the appellant was found to have been rightly convicted despite the fact that the Community Support Officer may have unlawfully detained him in a mistaken belief as to the extent of her powers. In **Rice v Connolly** [1996] 2 All ER 649 the appellant was charged with 'wilfully obstructing the police'. It was conceded that "wilfully" imported something done without lawful excuse. The appellant was entitled to decline to answer the questions put to him and to refuse to accompany the police officers. He was not therefore guilty of wilful obstruction. However, it is important to note the observation of James J, at page 652 of the report, that he would not go so far as to say that there may not be circumstances in which the manner of a person together with his silence could amount to an obstruction of the police. The question of the lawfulness or otherwise of an arrest was not before the court as per Lord Parker CJ at page 652a of the report:

> *"It seems to me quite clear that though every citizen has a moral duty or if you like, a social duty to assist the police , there is no legal duty to that effect, and indeed the whole basis of the common law is that right of the individual to refuse to answer questions put to him by persons in authority , and a refusal to accompany those in authority to any particular place ,**short**, **of course** ,**of arrest**" .* (emphasis mine)

[16] **Collins v Wilcock** [1984] 3 All ER 374 is another case cited by the Appellant. In that matter the police officer held on to the accused in order to question her and it was decided that ,except when lawfully exercising his (or her) power of arrest or some other statutory power, a police officer had no greater rights than an ordinary citizen to restrain another. In the present case the superintendent was exercising his power of arrest. In **Roy Denton v R RMCA No. 39/05 ,**also relied on by the appellant, the police officers told the appellant that they were arresting him pursuant to a warrant. No warrant was tendered in evidence at trial and the appellant was not found committing any offence. The arrest was therefore unlawful. The Jamaican Court of Appeal reaffirmed, per Lord President Harrison, that:

> *"At common law, a police officer may arrest without a warrant, a person who commits a misdemeanour in the officer's presence .In addition ,where a breach of the peace has been committed, in the officer's presence or the said officer is of the view, on reasonable grounds that a breach of the peace is about to be committed or renewed, he may arrest without a warrant.* ***A police officer has a statutory power to arrest without a warrant under the provisions of the Constabulary Force Act (The Act) section 15****:*
>
> *"...any person found committing any offence punishable upon indictment or summary conviction..." (emphasis mine)*

The Appellant also relied on **Christie v Leachinsky** [1947] 1 All ER 567. In that case the police did not inform the accused of the real reason for his arrest. This was deliberately done for "administrative" reasons. They gave a reason which they knew to be false .It was decided that an arrest without a warrant, can be justified only if it is an arrest on a charge which is made known to the person arrested unless the circumstances are such that the person arrested must know

the substance of the alleged offence, or where he forcibly resists arrest. Lord Simonds' words at page 576 of the report are instructive:

> *"It is clear then that, whatever may have been the secret thought of the constables at the time of the arrest and detention, they allowed the respondent to think that he was being arrested for being " in lawful possession" of certain goods, an offence, if it be an offence, which was at the most a misdemeanour within the Liverpool Act and could not, except under conditions which did not here obtain, justify an arrest without a warrant, and was described in terms not calculated to bring home to him that he was suspected of stealing or receiving the goods. In these circumstances the initial arrest and detention were wrongful. He was not aware and was not made aware of the act alleged to constitute his crime, but was misled by a statement which was calculated to suggest to his uneasy conscience that he was guilty of a so-called black market offence. It is no answer that the constables had no sinister motive. They had from the administrative point of view a perfectly good motive. It will be found in an answer to a question, which, though it related to a later stage of the proceedings, is equally applicable to the earlier: "Why did you not then charge him with larceny?" To this the revealing answer was: " Because that larceny was committed at Leicester and it would then be a matter of withdrawing one charge and handing him over to Leicester. Unlawful possession was the most convenient charge at the time until he could be handed over to the Leicester City Police." [my emphasis added]*

[17] The present case is distinguishable from those authorities. Here the police officer was clearly identified as such and the superintendent had reasonable cause to suspect the Appellant was guilty of an offence. The offence was ongoing. The Appellant was informed that he was being arrested for that offence which was a breach of the **Noise Abatement Act**. The Appellant assaulted the superintendent and forcibly resisted the arrest. The police officer was acting lawfully as there was reasonable cause to suspect that an offence was in progress and that the Appellant was the perpetrator.

[18] Section 30 of the **Jamaica Constabulary Force Act** provides that,

> *"If any person shall assault, obstruct, hinder or resist, or use any threatening or abusive and calumnious language or aid or incite any other*

> *person to assault, obstruct, hinder, or resist any Constable in the execution of his duty, every such offender shall be liable to a fine not exceeding two thousand dollars."*

It is therefore an offence to assault or resist a constable in the execution of his duty. An officer who has reasonable cause to suspect and honestly suspects that an offence is in progress has a duty to act. In this case the superintendent received information that loud music was being played. He attended the location and heard loud music being played. The premises bore the name of an establishment. The Appellant was pointed out to him and identified as the person responsible by a credible source. That source was a fellow constable. The superintendent's reasonable suspicions were further supported by the Appellant's conduct when an enquiry was made that is, his silence and his attempt to move away . In this regard the fact that the Appellant, as does every other citizen, had a right not to incriminate himself (and therefore to remain silent if asked questions by the authorities) did not mean the Superintendent was wrong to ask questions of him. His answer to those questions, or his conduct when asked such questions, are matters to consider when deciding whether the officer's conduct is reasonable or whether the officer had an honest belief grounded in some reasonable cause. This is to be distinguished from admissible evidence to prove guilt once charged with an offence. The dictum of Hawkins J in **Hicks v Faulkner** (above) is helpful, the learned Judge stated, at page 192 of the report, that:

> *"The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of–no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the*

> *actual guilt of the accused.* ***The distinction between facts to establish actual guilt and those required to establish a bona fide belief in guilt should never be lost sight of in considering such cases as that I am now discussing. Many facts admissible to prove the latter, would be wholly inadmissible to prove the former****." [emphasis mine]*

The point may be further illustrated by an example. Suppose the police receive a report that mangoes have been stolen. Upon arrival a citizen points out another person as the one seen stealing the mangoes. The person is informed of the report received and asked his name. The person remains silent and starts to walk away; Is the police officer, with the information in his possession and in the face of the person's conduct, to allow the individual to escape? I think not.

[19] In the case at bar the superintendent would have been derelict in his duty had he allowed the Appellant to leave given the information in his possession at the material time. The question is not whether it was in fact true that the accused was the proprietor or person responsible, nor is it whether in fact there was a breach of the **Noise Abatement Act** in progress. The question for present purposes, i.e. to answer whether his arrest or attempt to arrest was lawful, is whether the superintendent honestly believed on reasonable grounds that an offence was in progress, or had been or was about to be committed, and that the accused was the perpetrator. The superintendent was in uniform and clearly identifiable as a police officer. He brought to the attention of the accused the complaint of loud music being played and that he was going to arrest him for breach of the **Noise Abatement Act**. All this was done prior to the superintendent laying hold of the accused. There was on the evidence no breach as regards the form or manner of the arrest. As we have seen there was reasonable cause to support an honest belief in the guilt of the accused. The arrest or attempt to arrest was therefore lawful.

[20] The fact that subsequent investigation revealed that the accused was not guilty of a breach of the **Noise Abatement Act** does not alone prove that there was no

reasonable cause, or honest belief, at the time of his arrest. This is because the officer's conduct is not to be assessed as if he were in the rarefied atmosphere of a Court of Criminal Appeals. His conduct must be considered based upon the information in his possession whilst at the scene , the credibility of that information and the conduct of the person accused. So, if I may be permitted to extend the example adverted to earlier of the accused mango thief who attempted to get away while not answering questions; Once arrested and taken to the police station, enquiry may reveal he was the victim's neighbour who having seen or heard the excitement came over the fence or, the owner of the premises may attend the police station to explain it had all been a misunderstanding as he had not recognised the person in the mango tree as his own adult son who was in fact a deaf and dumb mute. The possibilities are endless. That is precisely why if a police officer responds to a reported breach of the peace, conducts reasonable enquiry and acts on information reasonably believed to be credible, the question whether he had an honest belief supported by reasonable cause must be looked at through the lens of the reasonable police officer faced with that situation.

[21] It was suggested that the evidence of the accused being pointed out to the superintendent was inadmissible hearsay. However this was clearly evidence which was important to support the state of mind of the superintendent when effecting the arrest. What is relevant is not whether in fact the Appellant was the proprietor of the premises or the person responsible, but whether he was pointed out as such. The statement is therefore admissible as having been adduced to prove the fact that it was made and not the truth of its content. As regards the alleged inconsistencies in the evidence, I find they were not such as to cause me to overturn the Magistrate's findings. They were not such as to impugn the Crown's witnesses or lead to their credibility being destroyed. I cannot say that the Magistrate's findings were unsupported by the evidence before her.

[22] It is for all the reasons stated above that I find no basis to disturb the learned Resident Magistrate's decision. Accordingly, the appeal is dismissed and the conviction and sentence upheld in respect of both offences.

[23] I will now take this opportunity to reiterate that no one, regardless of occupation or standing in society, is above the law. The law must be obeyed and those who enforce it, provided they act lawfully, must be respected lest we descend into a state of anarchy. I feel it is my duty, when regard is had to the facts as found by the learned Resident Magistrate, to direct the Registrar of the Supreme Court to forward a copy of this judgment to the Chairman of the General Legal Council, so he can conduct such investigation and take such action as he deems fit.

[24] A final observation. The Appellant's counsel provided for the Court a bundle of authorities. In it was the first page only of **R v Owen Sampson** 6 J.L.R. 292 containing holdings (1) and (2) of the report. Omitted was holding (3) as well as the judgment of the court which, when read, demonstrated that the case was very much in favour of the Respondent. One hopes that the omission of the other pages of the report was not deliberate and that it was an administrative error of some sort or the other.

David Batts

Puisne Judge