5 pages.

ROYAL COURT
(Samedi Division)

11.

22nd January, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Rumfitt

POLICE COURT APPEAL (The Assistant Magistrate)

Kevin Frederick Beeby

- v -

The Attorney General

Appeal against conviction on 17th October, 1996, in the Magistrate's Court, following a not guilty plea to 1 count of obstructing a police officer in the execution of his duty.

[The appellant was fined £75, or seven days' imprisonment in default of payment; fine to be paid at rate of £25 per week].

Court dismissed appeal against conviction. At Court's suggestion, the appellant appealed, *sur le champ* against sentence. This appeal was allowed, the sentence was quashed and the appellant granted an absolute discharge.

P. Matthews, Esq., Crown Advocate.
Advocate S.A. Pearmain for the appellant.

JUDGMENT

THE DEPUTY BAILIFF: On 17th October, 1996, Kevin Frederick Beeby was charged with having, on 25th August, 1996, in Devonshire Place, obstructed PC Buckfield in the due execution of his duty by refusing to obey his orders.

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It was the early morning of Sunday, two men were walking home, one had a call of nature and found that the public toilets in Parade Gardens were locked. The two men continued their journey and at 2.35 in the morning, Mr. Le Hucquet, one of the two

10 friends, apparently urinated against a door in Garden Lane. Two

officers in a police car stopped their vehicle and invited the friend to sit in the back of the police car. They had no doubt that he had urinated in the street and Mr. Le Hucquet agreed with their request.

What happened next gave rise to the charge. Let us just recall that WPC Baudains said in evidence *"it was just a routine check on Le Hucquet, just to talk to him and get his details as we would normally do and give him words of advice about if he had been urinating what the outcome could have been".*

Later, WPC Baudains said that she thought the appellant was of the opinion that his friend was going to be arrested or had been arrested. Le Hucquet said that he was told that he was not being arrested. However, matters did not rest there because the appellant then returned to the police car and tapped on the rear window. PC Buckfield got out of the police car and asked the appellant to move along. There is some divergence of evidence at this point and perhaps it might be better if I were to read it:

> *"PC Buckfield states that the appellant responded to his request to move away from the area by stating "are you going to make me?" Buckfield then made further numerous requests. Each time the appellant declined to move and constantly argued with Buckfield asking why he [the appellant] should go. According to PC Buckfield the appellant moved a few feet towards the front of the vehicle and was told to leave the area. The appellant refused point blank. It was at this point* (according to PC Buckfield) *that the appellant was arrested".*
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> *The appellant states that after he had tapped on the window of the police car Le Hucquet "conveyed to me to go away". The appellant stated that he was then asked a second time by PC Buckfield to leave. The appellant then stated that he left and walked around the corner on tc New Street by the 'Caravella' Restaurant and waited there about 20 yards away from the police vehicle. Another police vehicle then arrived on the scene. This vehicle contained one or two officers one of whom was a male officer who alighted from this second vehicle and proceeded to arrest the appellant. The appellant stated that he was not arrested by PC Buckfield".*

The reports - as they inevitably must be on occasions such as this - are confused, but the appellant was charged with having obstructed PC Martin Buckfield in the due execution of his duty.

Mrs. Pearmain brought all her considerable legal fire power to bear upon the argument that the word "wilful" should have been implied or expressly put into the charge. She made it very clear that she did not accept the decision of this Court on 27th June,

1979, in the appeal of Dennis Norman Henstridge (no reasoned judgment recorded) as being good Law. She had appeared to argue in it and it clearly vexed her still. But there, the Court having adjourned the appeal and after hearing legal argument, held that the obstruction of police officers in the execution of their duty did not have to be wilful in order to constitute an offence.

We have carefully considered all the cases cited to us by counsel. We need to recall that in the case of Melia -v- AG (26th July, 1989) Jersey Unreported; (1989) JLR N-9 the Court said this:

"In this case, likewise, the reason why the appellant was detained as he was by Sergeant McDonald was not because they had decided to arrest him for an offence which they had reasonable grounds for believing he had committed, was committing, or might be about to commit in the words of paragraph (1) of Article 3 in the Police Force (Jersey) 1974 Law, but merely to question him or make enquiries. I repeat there is no power in our statute for the police to do that, if in doing so they detain a man against his will. Of course if they ask someone: "Do you mind if we ask you some questions?" and he agrees, that of course is perfectly proper".

Therefore, it is not a question of someone trying to interfere when the police have wrongfully detained somebody; Mr. Le Hucquet was in the back of the police car quite voluntarily and of his own free will. It appears to us there is no difference between the argument in that case and the argument in this case. We also recall that after listening to argument put to him Judge Trott, having made up his mind as to which way he was going to decide, said this:

"Having listened to the evidence in this case I have absolutely no doubt in my mind whatsoever that there was wilful obstruction of the police in carrying out their duties".

That is not altogether surprising when the case of Henstridge was not before the Magistrate and any address made to the learned Judge was on the basis that the obstruction had to be wilful - that is deliberate and intentional. Of course, according to Henstridge, it had to be no such thing.

However, it is quite clear from the facts that there was sufficient to prove obstruction. Whether or not it was wilful as the Magistrate found is, perhaps, another matter.

We probably do not need to go any further except to say that we find it quite astonishing that such a relatively unimportant matter, so far as the appellant was concerned, should have led to his arrest and his incarceration overnight

in a police cell and that is what we would describe as "heavy handed policing".

5 We are going to dismiss the appeal against conviction. We further grant the appellant an absolute discharge on his appeal against sentence.

Authorities

Stroud's Judicial Dictionary of Words and Phrases (5th Ed'n): Vol 3: "Obstruct".

Blackstone's Criminal Practice (1996) pp.146-147: "Resisting or wilfully obstructing constable" para. B2.25-2.28.

Blackstone's Criminal Practice (1996) pp.25-26: "Wilfully" para. A2.8.

Rice -v- Connolly [1996] 2 QB 415.

Willmot -v- Atack [1977] 1 QB 499.

Lewis -v- Cox [1985] 1 QB 509.

AG -v- Weston (1979) JJ 141.

In re: Cooper (1985-86) JLR N-15.

Melia -v- AG (26th July, 1989) Jersey Unreported; (1989) JLR N-9.

AG -v- Munn (1967) JJ 603.

Carter -v- Nimmo and King (1968) JJ 1007; (1969) JJ 1257.