15/10 NZLR X

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M. No. 301/84

1270

BETWEEN BRENT PETER NICHOLAS

Appellant

A N D POLICE

Respondent

Hearing: 19 September 1984

Counsel: Sandra Moran for Appellant
K.G. Stone for Respondent

Judgment: 5 October 1984

JUDGMENT OF QUILLIAM J

This is an appeal against conviction on three charges arising out of an incident which occurred on the early morning of 26 February 1984.

The prosecution evidence was that of Constable McKennie and Sergeant Beal. They said they were driving down Riddiford Street towards Wellington City when they saw a woman waving to them to stop. They did so and pulled up behind a Mini which was parked outside a burger bar in Newtown. Constable McKennie went over to two women standing near the Mini. For convenience I refer to them as the owners. One was the woman who had stopped him. They explained that they were driving the appellant home and because of his behaviour they wanted him out of the car but he would not go. They asked the Police to remove him. The appellant was sitting in the back seat of the car. Constable McKennie spoke to him and told him the owners wanted him to leave the car and asked the appellant to get

out. The appellant refused and continued to refuse repeated requests to get out. The constable was joined by Sergeant Beal who made the same request of the appellant and told him that the owners wanted him to leave the car because of his behaviour. He was warned that he may be arrested for obstruction but still refused. He gave no reason for his refusal. Finally he was told he was under arrest for obstruction and the two policemen then removed him from the car. This was done by one pulling him and the other pushing from the other side. The appellant resisted strongly. When they got him out of the car he became very violent and punched and kicked. It took the two policemen three to four minutes to handcuff him and they only managed this after they had all fallen to the ground. In the course of this struggle the appellant, in coarse language, threatened to kill Constable McKennie. While this struggle was going on the owners got in their car and drove off. They have not since been located.

Eventually, having handcuffed the appellant, the Police took him to the Police Station where he was charged with obstruction, resisting the Police, and threatening language.

These charges were denied by the appellant who gave evidence in his own defence. He said that he had been at a party and there met the owners with whom he became friendly. They had offered him a lift home and he agreed. His evidence, and that of other defence witnesses who were at the party, was that the owners were behaving in a generally frivolous manner and appeared to be under the influence of alcohol or perhaps other drugs. However that may be, it evidently did not deter the appellant from going with them. The Police witnesses said that when they saw and were speaking to the owners they were acting normally and responsibly.

The appellant said that when the car reached Newtown it was stopped and the owners suggested that he should buy them some food. He said he had no money. He denied that his behaviour could have given them any cause for concern. He did not know they had stopped a Police car and could see no reason why the Police should be telling him to leave the car. He said their attitude was an aggressive one and he was resolved not to do as they told him because he believed he was not obliged to. He would have been prepared to leave the car if the owners had themselves told him to but they did not and he was not prepared to believe the Police when they said they were acting at the request of the owners. The appellant admitted resisting the Police in their attempts to remove him from the car and he admitted struggling with them outside the car although he denied having punched or kicked them. He also denied having threatened Constable McKennie although he acknowledged having used coarse language.

The District Judge reviewed the evidence and said that he accepted the evidence of the two Police witnesses. He found that the appellant had been under an obligation to leave the car when told by the Police that the owners wanted him out and that he was not justified in obstructing them by refusing to move or in resisting them when outside the car. He also found that the threatening language had been used.

The appeal has been argued on the basis of the submission that the appellant had a right to be in the car because he had a licence to be there and that there was no evidence that this licence had ever been revoked. It was accordingly argued that he was under no obligation to leave when told to by the Police and was justified in remaining where he was. For this reason the arrest was said to have been unlawful and so it followed that the charges of obstruction and resisting ought to have failed. Although it

was acknowledged that the threatening charge was separate from the other two incidents it was argued that it was part of a sequence of events and the conviction on it should be quashed along with the other two convictions.

This case depends entirely upon the status of the appellant while in the car. It was common ground that he was lawfully in the car under a licence from the owners. That licence was capable of being revoked at any time and once it was revoked then, within a reasonable time, the appellant was under an obligation to leave. At the time the Police arrived the appellant was simply sitting in the back seat of the car and there was no suggestion that he was then committing any offence or that the Police had any right, upon the basis of their own observations, to require him to move. If, however, the owners sought the help of the Police to remove someone whom they were no longer prepared to permit to continue as a passenger then it was the duty of the Police to assist them. It was the prosecution case that this was the role the Police were performing.

The question then is whether the appellant's licence to remain in the car was effectively revoked. There is no rule of law which prevents a person from acting through an agent in such a matter. What the Police did was, in effect, to tell the appellant that they were acting as agents of the owners in revoking his licence to remain, that is, in requiring him to leave. I think it is clear that the appellant was entitled, if he doubted the authority of the Police to act in that capacity, to require confirmation of it. He did not, however, do so. The prosecution evidence was that he gave no reason for refusing to move and the appellant himself did not say or suggest in his evidence that he had challenged the authority of the Police to act on behalf of the owners. He said no more than that he did not believe them. Had he communicated that disbelief to them

then I think there is no doubt they would have been under an obligation to satisfy him of their authority by obtaining the direct confirmation of the owners. Plainly, however, he did not.

In the circumstances which existed there was not, in my view, any obligation on the Police to do more than tell the appellant they were acting at the request of the owners. Those circumstances were not such as to have raised a doubt as to their authority. Whether or not the appellant saw the owners stop the Police car, and whether or not he saw the Police speak to the owners before approaching him, the situation must have been such as to make it obvious that they were acting with the approval of the owners. The evidence was that the car was parked immediately opposite a burger bar. The appellant said that the owners were outside the burger bar waiting their turn to be served and so he knew they were in the immediate vicinity of the car and of the Police. In that situation the only sensible inference to be drawn is that the appellant knew the Police were speaking to him on behalf of the owners and this, of course, is what they told him. As I have said he did not challenge their authority but simply refused to accept the revocation of his right to remain in the car. The fact that the Police informed the appellant orally of their authority from the owners does not make that any the less effective. If they had received intructions from the owners in the form of a document and had shown that document to the appellant it would still have been, in a technical sense, hearsay. But it is difficult to accept that the appellant would have regarded himself as still entitled to remain. The situation is no different by reason of the communication having been an oral one.

I should mention that objection was taken to the evidence of the conversation between the Police and the

owners having been admitted. I think that objection is sound but that it does not assist the appellant in this case. Had the appellant challenged the authority of the Police then they could not later have established their authority by giving evidence of their conversation with the owners. That would have been hearsay and, in the absence of the owners as witnesses, the prosecution may well have failed. If I put aside that evidence as to the conversation, however, it does not affect the reasoning which I have already set out.

Once the appellant had made it clear that he was refusing to move the Police first warned him that he was liable to be arrested for obstruction and then arrested him. This was before any attempt had been made to remove him. The next question, therefore, is whether they were entitled to arrest him on that charge.

Section 23 of the Summary Offences Act 1981 makes it an offence if any person "intentionally obstructs ... any constable ... acting in the execution of his duty." There can, I think, be no doubt that Constable McKennie was, in this instance, acting in the execution of his duty. He had made it clear to the appellant that he was passing on to him the revocation of the appellant's right to remain in the car. The appellant had made it equally plain that he had no intention of moving. This was not the kind of situation that entitled the Police simply to depart. Clearly there was the likelihood of a breach of the peace occurring and the prevention of crime is an essential part of the duty of a constable.

It is necessary then to consider whether the appellant obstructed Constable McKennie. In Hammerley v Scandrett [1921] NZLR 455 Sim J said that for the purpose of an offence under s 68 of the Police Offences Act 1908 it was

necessary to establish that the obstruction was done deliberately and intentionally "and with the idea or intention of preventing the Sergeant from going away to other duties" (p 456). This has been followed in more recent cases (e.g. Dash v Police [1970] NZLR 273 at p 275). Section 23 of the Summary Offences Act 1981 is, for present purposes, identical with s 68 of the Police Offences Act 1908 except that it uses the word "intentionally" instead of "wilfully". I do not consider that change affects the application of the earlier case.

Applying that principle to the present case I consider that the appellant was obstructing Constable McKennie. He was being intentionally obstructive. He knew that the constable was informing him of a request by the owners to leave the car. He neither complied with that request nor raised any challenge to its validity. He simply refused to move. The constable was not obliged to accept that refusal, without explanation, and leave the situation unresolved. He was accordingly prevented from going about his other duties by the intentional act of the appellant. In my view this amounted to obstruction.

The appellant was thereupon arrested. The constable had the power to make the arrest. Section 39 of the Summary Offences Act provides that any constable may arrest without warrant "any person whom he has good cause to suspect of having committed an offence against any of the provisions of this Act" with the exception of certain sections which do not apply here. Constable McKennie had good cause to suspect that the appellant had committed an offence against s 23 of the Act, namely, that of obstructing a constable acting in the execution of his duty.

Once the arrest had been made there can be no doubt at all that the further offence was committed of

resisting Constable McKennie acting in the execution of his duty. I did not understand that to be contested so long as there had been a lawful arrest in the first place.

Similarly, the finding of the District Judge as to the charge of threatening language was not really challenged.

For the reasons I have given I consider the District Judge was entitled to convict on each charge and the appeal is accordingly dismissed.

Solicitors: Goddard, Moran, Finlayson & Co., WELLINGTON, for Appellant

Crown Solicitor, WELLINGTON, for Respondent