IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 32 OF 1997

BETWEEN

MICHAEL ANTHONY MILLER

24-04-98

APPELLANT

AND

REGINA

RESPONDENT

BEFORE: The Rt. Hon. Edward Zacca, President
The Rt. Hon. Telford Georges and the
Hon. Gerald Collett, Justices of Appeal

Pierre Lamontagne Q.C. for the Appellant

Anthony Akiwumi for the Crown

27th November 1997 and 24th April, 1998

JUDGEMENT

This is a second appeal against conviction in the Summary Court on charges of Resisting Arrest and of Assault upon a Police Officer acting in the execution of his duty. The Appellant was duly convicted of these offences on 8th March, 1996 and was sentenced on each of them to one month's imprisonment suspended for two years, consecutively. At the same trial he was acquitted of disorderly conduct, the allegation having been that he had thrown a bottle at police. His appeal to the Grand Court against the two convictions was dismissed on 27th September, 1997.

The essential ground of the appeal to this Court is that the trial magistrate and the learned Judge

who heard the Appeal in the Grand Court both misdirected themselves in law in holding or assuming that:-

(a) Knowledge by the Appellant that those seeking to arrest him were police officers acting in the execution of their duty was not an essential ingredient of these offences to be proved by the prosecution;

(b) The Appellant was not entitled to defend himself by use of reasonable force even if he genuinely believed that those assailing him were not police officers acting lawfully.

The facts of the case can be summarised in the words of the Grand Court Judge as follows:

"On the 24th August, 1994 what is commonly known as a "session" was held at Mary Street, George Town. The crowd spilled out unto the main road. Loud music was being played and some of those who attended were drinking beer from bottles which was on sale, however, the premises was not licensed premises.

Following a report a group of police officers members of the Task Force arrived on the scene and requested the disc jockey to discontinue the music; the disc jockey complied with their request and announced over the loud speaker system that the police had requested that the music be turned off. The police asked the crowd to disperse.

The police started to leave and some members of the public starting throwing bottles in their direction. The police began walking towards the crowd in the direction from which the bottles were being thrown; at the same time telling the crowd to go home. There was a crowd of approximately 200 persons.

Police officer Donnelly said that he saw the appellant throw a bottle in his direction, that it broke and splinters from it actually hit him causing injury. Donnelly said he attempted to arrest the appellant for disorderly conduct but the appellant resisted and a struggle ensued, however with the assistance of other officers the appellant was arrested and taken to the police station where he was detained".

In support of his grounds of appeal, leading counsel for the Appellant relied heavily upon **Blackburn and others -v- Bowering and another (1994) 3 AER 380**, a unanimous decision of the English Court of Appeal which had not been cited in either of the courts below. In that case it had been held that, since to apply reasonable force in self defence was generally lawful, if a defendant applied force to a police or Court officer which would be reasonable if that person were not such an officer and the defendant believed he was not, then even if his belief was unreasonable he had a good plea of self defence. It was further held that it was for the prosecution to prove that, in such circumstances, the defendant had not acted in reasonable self defence or under such a mistaken belief.

A decision of the English Court of Appeal, while not formally binding upon this court automatically, is necessarily one of great persuasive authority, especially where it is unanimous and is directed towards a doctrine of the Common law. Having carefully studied the three judgements given in Blackwin -v- Bowering, we are unable to find any reason to disagree with them and are content to adopt that decision as part of the law of the Cayman Islands. It follows that a considerable modification is necessary to the doctrines expressed in paragraphs 19-275 of Archbold's Criminal Evidence Pleading and Practice 1977 Edition, which was cited in the Courts below and on which they relied in coming to the conclusions of law which are now complained of. It is true that the Lords Justices in Blackwin -v- Bowering stopped short of overruling the earlier English authorities upon which those doctrines are based. But, in practice in the light of that decision, the earlier authorities can no longer be safely relied upon at least in a case where the defendant asserts that he forcibly resisted arrest in ignorance of the official character of those attempting to apprehend him.

The present Appellant has asserted these facts in his evidence at the trial. The learned magistrate came to no finding as to whether or not he genuinely believed that those assisting him were not police officers, presumably because the magistrate did not regard such a finding as necessary to his determination of guilt or innocence on these charges. That as we have seen was an error of law. Is it fatal to these convictions? The answer is supplied by section 9 of the Court of Appeal Law (1996 Revision). These convictions must fall unless it is evident that no substantial miscarriage of justice has occurred and the test of that is well established. The question is

whether, if he had applied his mind to the question, the learned magistrate would inevitably have found upon the evidence before him that the Appellant was under no such misapprehension when he resisted arrest on 24th August, 1994.

It is conceded by counsel for the Appellant that the Grand Court Judge and indeed this Court are entitled to draw inferences from the uncontested evidence given at the trial. The Judge did so when he stated at p. 7 of his judgement on appeal - "Donnelly said that he informed the appellant that he was arresting him for disorderly conduct but even if he had not informed him, the Appellant could hardly have been in doubt that Donnelly was a police officer". He gave the following reasons for that finding.

"The police officers had brought the playing of the music to an end. The disc jockey announced that the police had stopped the playing of the music. The police informed the crowd that they should disperse and go home. They also informed them that they were cops. Bottles were thrown in the direction of the police officers. They moved in a group towards the direction from which the bottles were being thrown while continuing to tell the crowd to go home. Hurlston who was beside the appellant saw and heard all this. It is not plausible that in those circumstances the appellant did not become aware that Donnelly was a police officer. One would have expected that the appellant would have heard what Hurlston heard and most likely saw what she did".

Counsel for the Appellant, while acknowledging the existence of these inferential findings argues that they fall short of a finding that, at the time he was jumped upon, the appellant knew that it was a police officer who had done so and he emphasises that the Judge like the trial magistrate did not appreciate that any such finding was necessary to support these convictions.

That may be so, what they do in our view clearly amounts to a finding that, if the trial magistrate had addressed his mind to that issue, he would almost inevitably have found that the Appellant did indeed appreciate that he was being arrested by a police office acting in the execution of his duty.

We agree that this is the proper inference to be drawn from the undisputed facts in evidence which were listed by the learned Judge in the passage just quoted from, coupled with the further fact that the police officers were all similarly dressed in a form of uniform which clearly identified them as such, even though it differed markedly from the more familiar form of uniform usually worn by such officers on duty in the streets of Georgetown.

We are, therefore, satisfied that the Appellant was not labouring under any mistake of fact, reasonable or unreasonable. He may indeed have been labouring under a mistake of law to the effect that, not having thrown any bottle at the police, he was entitled to forcibly resist arrest for disorderly conduct by a police officer who was under the mis-apprehension that he had done so. But he had in law no such right to resist. He should have submitted quietly to the arrest and his mistake of law affords him no defence to these charges.

For these reasons, applying the proviso to section 9 of the Court of Appeal Law, we dismiss the appeal and confirm the convictions appealed against and the sentences passed thereon.

Dated 24th April, 1998

President

Justice of Appeal

Justice of Appeal