

RICE v. CONNOLLY.

QUEEN'S BENCH DIVISION

[1966] 2 QB 414, [1966] 2 All ER 649, [1966] 3 WLR 17, 130 JP 322

HEARING-DATES: 3 May 1966

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CATCHWORDS:

Criminal Law -- Obstructing constable when in the execution of his duty -- Refusal to answer questions -- Whether wilful obstruction -- Police Act 1964 (c. 48), s. 51 (3).

HEADNOTE:

The appellant was seen by police officers in the early hours of the morning behaving suspiciously in an area where on the same night breaking offences had taken place. On being questioned he refused to say where he was going or where he had come from. He refused to give his full name and address, though he did give a name and the name of a road, which were not untrue. He refused to accompany the police to a police box for identification purposes, saying, "If you want me, you will have to arrest me". He was arrested and charged with wilfully obstructing the police contrary to s. 51 (3) \* of the Act of 1964. On appeal it was conceded that "wilfully" imported something done without lawful excuse.

\* Section 51 (3), so far as material, provides: "Any person who... wilfully obstructs a constable in the execution of his duty... shall be guilty of an offence..."

Held: although every citizen had a moral or social duty to assist the police, there was no relevant legal duty to that effect in the circumstances of the present case, and the appellant had been entitled to decline to answer the questions put to him and (prior to his arrest) to accompany the police officer on request to the police box to establish identity; accordingly, in the circumstances, "wilful obstruction" by the appellant was not established, although he had been obstructive, because no obstruction without lawful excuse had been established (see p. 652, letters D and I, post).

Meaning of "obstruction" stated in *Hinchcliffe v. Sheldon* ([1955] 3 All E.R. at p. 408, letter F) applied.

Per JAMES, J.: I 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 within s. 51 (3) of the Police Act 1964 (see p. 652, letter I, to p. 653, letter A, post).

Appeal allowed.

NOTES:

There is real distinction between a case where there is merely a refusal to answer questions and a case where false information is given (see p. 652, letters B and C, post).

As to obstructing the police in the execution of their duty, see 10 HALSBURY'S LAWS (3rd Edn.) 634, para. 1207; and for cases on the subject, see 15 DIGEST (Repl.) 853, 854, 8213-8219.

As to a constable's right to assistance from private persons, see 30 HALSBURY'S LAWS (3rd Edn.) 142, 143, para. 231.

For the Police Act 1964, s. 51, see 44 HALSBURY'S STATUTES (2nd Edn.) 924.

CASES-REF-TO:

Hinchcliffe v. Sheldon, [1955] 3 All E.R. 406; [1955] 1 W.L.R. 1017; 120 J.P. 13; 15 Digest (Repl.) 854, 8217.

INTRODUCTION:

Case Stated. This was a Case Stated by W. A. SIME, ESQ., Q.C., in respect of his adjudication as Recorder of Grimsby Brough Quarter Sessions sitting at Grimsby on May 20, 1965. On that day the appellant, Leonard Rice, appeared before the recorder on appeal against a certain conviction at the Grimsby Borough Magistrates' Court on an information laid by the respondent, Thomas Connolly, an inspector of police, for having on Mar. 8, 1965, in Victor Street in the county borough of Grimsby wilfully obstructed Oliver Baillie a constable of the Grimsby Borough Police Force in the due execution of his duty, contrary to s. 51 (3) of the Police Act 1964. The conduct alleged to amount to obstruction included refusing to accompany the constable to a police box for identification. The recorder dismissed the appeal and the appellant being dissatisfied with the said determination of his appeal as being erroneous in point of law requested the recorder to state a Case for the opinion of the High Court. The facts are summarised in the judgment of LORD PARKER, C.J.

The contentions before the recorder were as follows. For the appellant it was contended that although a police officer acting in the execution of his duty was entitled to ask a citizen questions, including questions as to his name and address, there was no legal duty on the citizen, in the absence of some obligation imposed by statute (and there was no such statute applicable in the present case) to answer such questions, nor in the absence of some statutory duty (and there was none in the present case) was there any duty on a citizen to accompany a police officer anywhere in order that his identity might be investigated; the citizen had a right to refuse to answer the questions put to him by the constable and to refuse to accompany him to the police box; it followed, so it was contended, that the constable could not lawfully require answers to his questions and could not lawfully require the appellant to accompany him to the police box and that the appellant's conduct had not amounted to an obstruction of the constable in the execution of his duty. For the respondent it was contended that at common law the citizen had a duty to assist the police in the investigation of crime and that there was therefore a legal duty on the appellant to answer the constable's questions and to accompany him to the police box for the purpose stated, that the appellant had not discharged that legal duty and that he had, therefore, obstructed the constable in the execution of his duty.

The recorder's opinion is set out at p. 651, letter D, post. The question of law for the opinion of the High Court was whether the recorder was right in finding that the conduct of the appellant amounted to a wilful obstruction of the constable in the due execution of his duty.

COUNSEL:

Geoffrey Lane, Q.C., and E. F. Jowitt for the appellant. H. A. Skinner, Q.C., and David Barker for the respondent.

PANEL: Lord Parker, C.J., Marshall and James, JJ.

JUDGMENTBY-1: LORD PARKER, C.J.

JUDGMENT-1:

LORD PARKER, C.J.: In the early hours of the morning n(1) of Mar. 8, 1965, Police Constable Baillie was out on patrol duty on his pedal cycle in and around Oxford Street, Grimsby. A number of breaking offences had been committed that night, and the officer was looking out to see if he could see anyone behaving suspiciously. One indeed of these breakings had been

committed quite close to where he was, within the previous forty-five minutes. He saw a man who turned out to be the appellant behaving suspiciously, looking into shop windows, looking round, seeing the constable and moving up a side street, coming back later from the side street and going along looking at further shops, and keeping a wary eye on the constable. A time came when Police Constable Baillie, who had by then been joined by another police constable, went up and stopped the appellant. Police Constable Baillie asked where he was going, and the appellant ignored the inquiry, though he heard it. The police constable again asked him where he was going and where he had come from and for his name and address, whereupon the appellant replied: "Give me a good reason why I should". In due course the appellant was allowed to walk away, and when he had got a little distance away he stopped to light his pipe; the police officers then saw that he had got a cut on his finger. They went up to him again, and again Police Constable Baillie asked for his name and address. After again being asked a second time, he merely replied: "Rice, Convamore Road". That incidentally was true as far as it went. The police constable said that he wanted his full name and address, and the appellant refused to give it. Finally the police constable asked the appellant to accompany him to a police box to confirm his identity, whereupon the appellant replied: "Look, son, I am not moving from this spot. If you want me you will have to arrest me"; thereupon the police constable arrested him and gave as the ground for arrest that he had obstructed him in the execution of his duty in that he refused to say where he was going, where he had come from and had refused to give his full name and address, and had refused to accompany him to the police box. Those were the facts as found by the recorder, with these additions, that throughout the appellant's manner had been sarcastic and awkward, that when, long after the arrest, he was seen by an inspector, the appellant said:

n(1) The time was about 12.45 a.m.

"I have been arrested. You cannot de-arrest me. It might be worth a bob or two to me. I've done nothing wrong. I am arrested, what are you going to do?"

Lastly it is found that in fact the appellant never was charged with any of the breaking offences in the neighbourhood, nor were there ever any grounds for suspecting that he was guilty of any of them. It was in those circumstances that the recorder expressed his decision in these terms:

"I was of the opinion that on the facts as stated above and having regard to those set out in para. [5] (vii) [i.e., the remarks made after arrest to the inspector] the appellant had deliberately intended to distract Police Constable Baillie from his duties and had thereby wilfully obstructed Police Constable Baillie in the due execution of his duty and was guilty of the offence charged. I therefore dismiss the appeal."

The question left for the opinion of the court is whether the recorder was right in finding that the conduct of the appellant on the facts stated amounted to a wilful obstruction of the police constable in the due execution of his duty.

The statute creating the alleged offence in this case is s. 51 (3) of the Police Act 1964, which increases the penalties for assaults on police constables and obstruction of them in the execution of their duty, but otherwise preserves largely as offences those which appeared in earlier legislation n(2). What the prosecution have to prove is that there was an obstructing of a constable, that the constable was at the time acting in the execution of his duty, and that the person obstructing did so wilfully. To carry the matter a little further, it is in my view clear that to "obstruct" in s. 51 (3) is to do any act which makes it more difficult for the police to carry out their duty. That description of obstructing I take from the case of *Hinchcliffe v. Sheldon* n(3). It is also in my judgment clear

that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury. There is no exhaustive definition of the powers and obligations of the police, but they are at least those, and they would further include the duty to detect crime and to bring an offender to justice.

n(2) See s. 12 of the Prevention of Crime Act, 1871, as amended by s. 2 of the Prevention of Crimes Amendment Act, 1885; 5 HALSBURY'S STATUTES (2nd Edn.) 873, 915. Both s. 12 and the Act of 1885 are repealed by s. 64 (3) of, and Sch. 10 to, the Police Act 1964. Assaults on constables are rendered offences by s. 51 of the Act of 1964. The extension of the offence of assault, enacted in s. 12 of the Act of 1871, to wilfully obstructing a constable in the execution of his duty (which extension was enacted by s. 2 of the Act of 1885) is re-enacted in s. 51 (3) of the Act of 1964.

n(3) [1955] 3 All E.R. 406 at p. 408, letter F, per LORD GODDARD, C.J.

It is quite clear that the appellant was making it more difficult for the police to carry out their duties, and that the police at the time and throughout were acting in accordance with their duties. The only remaining element of the alleged offence, and the one on which in my judgment this case depends, is whether the obstructing of which the appellant was guilty was a wilful obstruction. "Wilful" in this context in my judgment means not only "intentional" but also connotes something which is done without lawful excuse, and that indeed is conceded by counsel who appears for the prosecution in this case. Accordingly, the sole question here is whether the appellant had a lawful excuse for refusing to answer the questions put to him. In my judgment he had. 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. Counsel for the respondent has pointed out that it is undoubtedly an obstruction, and has been so held, for a person questioned by the police to tell a "cock-and-bull" story, to put the police off by giving them false information, and I think he would say: well, what is the real distinction, it is very little away from giving false information to giving no information at all; if that does in fact make it more difficult for the police to carry out their duties then there is a wilful obstruction. In my judgment there is all the difference in the world between deliberately telling a false story, something which on no view a citizen has a right to do, and preserving silence or refusing to answer, something which he has every right to do. Accordingly, in my judgment, looked on in that perfectly general way, it was not shown that the refusal of the appellant to answer the questions or to accompany the police officer in the first instance to the police box was an obstruction without lawful excuse.

I would add this, that for my part I have very grave doubt whether the recorder was approaching the case on that basis. I think that the recorder had in mind that though the appellant had a perfect right to refuse to answer questions, his whole conduct in this instance and the answers he did give were such as to be a deliberate obstruction to the police. I say that for this reason, that he went out of his way to find that the appellant's manner throughout was sarcastic and awkward. He went on to recite that extraordinary attitude taken up by the appellant after arrest, in the conversation with the police inspector, and finally he said in his opinion that the appellant had deliberately intended to distract Police Constable Baillie from his duties. I cannot help feeling that the recorder here was giving full effect to the law as I understand it to be, but also was saying that the appellant's whole attitude and behaviour

amounted to a distracting of the police constable from his duties. However, there are certain difficulties in this in that neither counsel before us today has suggested that that is the true view of the recorder's decision in this case, and indeed counsel for the respondent has invited us to deal with the matter on the more general basis. Finally, I do see myself difficulties in upholding the recorder's decision on that ground, if that be the true ground of his decision. In the first place it would require conduct going further than what happened in this case to establish an obstruction, and secondly one of the matters, and apparently an important matter in the recorder's view, was the appellant's behaviour after his arrest, in front of the inspector; this was something long after the event, which could not be evidence of the awkward behaviour, if it was awkward, of the appellant at the time of the incident itself. In these circumstances I have come to the conclusion that this appeal succeeds.

JUDGMENTBY-2: MARSHALL, J.

JUDGMENT-2:

MARSHALL, J.: I agree. In order to uphold this conviction it appears to me that one has to assent to the proposition that where a citizen is acting merely within his legal rights, he is thereby committing a criminal offence. I cannot see that the manner in which he does it can make any difference whatsoever, and for the reasons given by LORD PARKER, C.J., I agree that this appeal should be allowed.

JUDGMENTBY-3: JAMES, J.

JUDGMENT-3:

JAMES, J.: For the reasons given by LORD PARKER, C.J., I also agree that this appeal should be allowed. For my own part I would only add this, that I 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 within the section; whether they do remains to be decided in any case that happens hereafter, not in this case, in which it has not been argued.

DISPOSITION:

Appeal allowed. Conviction quashed.

SOLICITORS:

Middleton, Lewis & Co., agents for H. K. & H. S. Bloomer & Co., Great Grimsby (for the appellant); Sharpe, Pritchard & Co., agents for Town Clerk, Great Grimsby (for the respondent).