COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

MCCrApp. No.54 of 2018

B E T W E N

PERSIS PINDER

Appellant

AND

COMMISSIONER OF POLICE

Respondent

BEFORE: **The Honorable Sir Michael Barnett, Kt P**

The Honorable Justice Jon Isaacs JA

The Honorable Mr. Justice Milton Evans JA

APPEARANCES: **Mr. Paul Wallace Whitfield, Counsel for Appellant**

Mr. Eucal Bonaby, with Ms. Jacklyn Burrows, Counsel for the Respondent

DATES: **5 October 2020; 29 October 2020; 9 December 2020; 16 December 2020; 14 January 2021**

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Criminal Appeal- Assault with a dangerous instrument-Conditional Discharge- Appeal against conviction- Whether the appellant has been convicted-Section 209 of Criminal Procedure Code-

Section 214 of Criminal Procedure Code-Section 231 of the Criminal Procedure Code- Section 232 of the Criminal Procedure Code- Section 14 of Court of Appeal Act

On the 16 February 2017, while in the area of the Hugh Campbell Primary School in Grand Bahama, the appellant (Persis Pinder) ran over the foot of a security guard with her vehicle causing injury. The appellant was found guilty of the offence of assault with a dangerous instrument and given a conditional discharge. The appellant has not satisfied the conditions of her discharge as she seeks to appeal her conviction on the grounds, inter alia, that extraneous matters were taken into consideration, the evidence was wrongly rejected, the decision of the judge was erroneous, unreasonable and unsatisfactory, material irregularities, the sentence was wrong on principle and the appellant was never informed of her right to appeal.

Held: The appeal is dismissed

The appellant appealed on the basis on the basis that she had been convicted by the magistrate. Under **CPC Section 209** it is clear that where a magistrate discharges an accused, the magistrate has not convicted the accused of the charge and therefore there has been no conviction of the appellant.

The appellant elected summary trial. The record does not reflect that the appellant or her counsel objected to the fact that the proceedings were not by way of a preliminary inquiry. No appeal can rely on the ground of the jurisdiction of the magistrate's court to hear a case unless that objection was taken before the magistrates.

There is no evidence that the magistrate's decision was unreasonable. It is clear that the magistrate carefully considered the evidence. Once the magistrate accepted the evidence of the complainant and Musgrove as truthful, the magistrate was entitled to find the appellant guilty. A conditional discharge was a lenient sanction.

The obligation to give notice of the right to appeal only arises where a person has been convicted. If there has been no conviction the obligation imposed by **Section 232** does not arise and even if the magistrate was obliged to give a notice under **Section 232**, the appellant has suffered no prejudice by the omission by the magistrate to do so.

There is no basis for setting aside the magistrate's decision to find the appellant guilty and grant a conditional discharge.

McCartney v Commissioner of Police; Dean v Commissioner of Police; Minnis v Commissioner of Police BS 1999 SC 29 considered

Rondel Meade et v Commissioner of Police MNIMCRAP 2018/0007 considered

JUDGEMENT

Judgement Delivered by the Honourable Sir Michael Barnett, P:

1. The appellant was charged with one count of assault with a dangerous instrument. The incident occurred on the 16 February 2017 at a school yard where the appellant is alleged to have run over the feet of a security guard with her vehicle.

2. The appellant pleaded not guilty and the matter was heard before a magistrate in Grand Bahama. After hearing the evidence, the magistrate found the appellant 'guilty'. The magistrate clearly did not regard the incident as one of significant gravity as although she found the appellant guilty, she gave the appellant a conditional discharge. The conditions imposed were:

> **i) Defendant is conditionally discharged for a period of nine months.**
>
> **ii) Defendant to attend the Department of Rehabilitation for anger management.**
>
> **iii) To attend monthly Court review to confirm attendance of Department of Rehabilitation program.**
>
> **iv) To be of good character.**
>
> **v) In breach of any of the conditions of the Conditional Discharge, the Defendant to pay a fine of five hundred ($500.00) or four months Custodial Sentence at Correction Centre.**

3. The appellant has not satisfied the conditions of her discharge. She has immediately appealed "the conviction". At the hearing the appeal counsel for the appellant stated that she has not complied with the conditions because under **Section 235 of the Criminal Procedure Code**, the appeal operates as a stay of the "execution of the decision appealed against".

4. Counsel for the appellant has made it clear that the appellant is not appealing sentence, although that was not readily apparent from the amended Notice of Appeal filed on the 4 December 2020.

5. The Notice of Appeal states:

> **"I, the above named Appellant hereby give you notice that I desire to appeal to the court of appeal against <u>my conviction</u> on the grounds hereinafter set forth in the Notice of Motion" [Emphasis Mine]**

6. The several grounds set out in the Notice are:

> 1. **The learned Magistrate took extraneous matters into consideration;**
>
> **2. Evidence was wrongly rejected by the learned magistrate;**
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> **3. The decision of the learned Magistrate was unreasonable and could not be supported having regard to the evidence;**
>
> **4. In all the circumstances of the case, the decision of the learned Magistrate is unsafe or unsatisfactory;**
>
> **5. The decision was erroneous in point of law, inasmuch as on the evidence it was not possible for a reasonable tribunal properly directed to conclude that the Prosecution had made out a case of guilt beyond a reasonable doubt;**
>
> **6. The decision of the learned Magistrate was such that a Magistrate viewing the circumstances reasonably could not properly have so decided;**
>
> **7. The sentence passed by the learned Magistrate was based on a wrong principle; (*this is clearly a challenge to sentence and not conviction*)**
>
> **8. A material irregularity substantially affected the merits of the case was committed in the course of the proceedings, viz., before any evidence had been had, the learned Magistrate admonished the Appellant "do not bring anyone in here to tell lies for you";**

9. Defense Counsel was never afforded the opportunity to mitigate on behalf of the Appellant before sentencing; *(again a challenge to sentencing and not conviction)*

10. The Appellant was never informed by the learned Magistrate of her right of appeal;

11. A Material irregularity substantially affecting the merits of the case was committed in the course of the proceedings, viz., the learned Magistrate having put the Appellant to her election for trial by jury or summary trial in the Magistrates' Court (the alleged offence (as opposed to conducing a preliminary inquiry), notwithstanding the fact that the Appellant elected jury trial, in breach of the provisions of Section 214 of The Criminal Procedure Code. Ch. 91.

12. The decision was erroneous in point of law insomuch as the learned Magistrate having put the Appellant to her election for trial by jury or summary trial in the Magistrates' Court (the charge being triable either way), proceeded to conduct a summary trial for the alleged offence (as opposed to conducting a preliminary inquiry), notwithstanding the fact that the Appellant had elected jury trial, in breach of the provisions of Section 214 of The Criminal Procedure Code.

7. Before considering the grounds, it would be necessary to set out the Magistrate's ruling.

8. She said:

"The Court considered the evidence of all the persons testified during the trial and the physical evidence at the locus, which also included distance, location of the parties testified at the time of the incident, space available for pedestrians and the limited designated car park areas in the compound. [Emphasis Mine]

From the evidence of the Complainant, Security Officer Musgrove and the Defendant, the Complainant, and Ms. Musgrove had problems with the Defendant in not complying with the rules of the school imposed by the Security Guards. The problem commenced since the incident in 2016 when the Defendant had left her daughter late at Hugh Campbell School after school hours and had to be notified to collect her child for

the Security Guards to leave the School Compound. The history of Defendant as a parent of a child attending Hugh Campbell School on the evidence of the Complainant and Security officer Musgrove was that the Defendant did not follow the Rules by parking her car across the Principal and Teacher's cars located at the car park space of the Hugh Campbell School.

This behavior extended to the Defendant not respecting the authority of the Security Officers of the School and doing whatever she wanted. According to the evidence there were reports made about the Defendant to the Principal the Police were called for assistance to the school compound.

The Defendant also stated that she had made complaints about the Complainant to the Principal and to the Ministry of Education about the Complainant and to also to Mr. McKay at the Ministry of Education.

According to the evidence of the Complainant and Ms. Musgrove School gates were operated, guarded and closed at a certain time of the day when the school was out, and cars were only allowed into the school compound when space was available and at the discretion of the Security guards. The Defendant witness, Reynon Hudson stated in his testimony that the security gates were locked when the bell ring at 3pm, when he went to pick up the Defendants daughter and the little boy from the school compound. Mr. Hudson stated that he came back to his aunt's car with the Defendants daughter only, and his aunt started the car and preceded to go into the security gate. The Defendant and her nephew Hudson in their evidence stated that the Defendant was behind a white truck that entered through the security gates, whereas Mr. McIntosh, the Defendants witness in his evidence alleged that the Defendants vehicle was next in line to his vehicle to enter the gate after him.

Both the Complainant and Security officer Musgrove evidence was that the Complainant had allowed a white truck driven by a female through the gate and when the gate was being shut by the Complainant the Defendant drove her vehicle into to the

gate and blamed the Complainant for causing damage to her vehicle by closing the gate on her vehicle.

The evidence of the Complainant and the Security officer Musgrove was that after the Complainant drove up and stopped her vehicle at the gate and scraping it to the gate, there were exchange of words to stop the Defendant driving through the gate and into the school Compound.

According to the evidence of the Complainant and Security officer Musgrove the Defendant threatened the Complainant and said to her, "I am going to run my car through you".....

According to the evidence of the Complainant and Ms. Musgrove the Defendant got back into her vehicle through the Security gate, and according to the Complainants evidence, the Defendants vehicle rolled over her left foot. That same day the Complainant made a complaint to the police and visited the hospital. On medical examination by Dr. Bommini the complainant received time off from work, and was given prescription medicine for pain.

The Court found the evidence of Security officer Ms. Musgrove truthful and corroborating the evidence of the Complainant in respect to the incident relating to the Defendant on 16" February, 2017. [Emphasis Mine]

The witness of the Defendant Mr. McIntosh stated that, "..... She didn't enter, the white truck came, the security officer said this is the teacher husband, she let him go in instead of Mrs. Pinder I entered through the left gate. Then Mrs. Pinder was to 20 next she was right behind she was on the left hand side of the gate. The white truck came through and went through the gate after me; they usually say that when a car is in line it's next to enter the gate. White truck entered and behind Mrs. Pinder started to come and that when the security officer closed the gate on Mrs. Pinder car. Mrs. Pinder got out of the car. Security officer and Mrs. Pinder had verbal. .. Mrs. Pinder got in her car there was enough space for her to get through the gate she proceeded inside. Never mashed with the security guard body..... The security officer said, "we going to get her

lock up today". ... None hollowed up in pain I didn't see Mrs. Pinder drive violently into the gate."

According to the evidence of Mr. McIntosh he said he saw what was happening between the parties and admitted that he did not hear what was verbally said between the Complainant and the Defendant when he was standing near the principal's office. Therefore, Mr. McIntosh could not have heard when said in his testimony that he heard the security officer say, "We going to get her lock up today".

In the opinion of the Court Mr. Hudson and Mr. McIntosh were not truthful in their testimony about what they heard and saw in respect to the behavior of the Defendant with her vehicle at the Security gates and towards the Complainant. In the evidence of the Defense there was a discrepancy in respect to the exact location of the Defendant's vehicle at the Security gates, the communication between the Defendant at the Security Gate and how the Defendant drove her vehicle through the gates into the compound. [Emphasis Mine]

Further, according to the physical evidence before the Court at the locus of the incident, a front passenger of a vehicle with a tinted glass and dashboard or a person in a distance of 80 feet with people in the compound is unlikely to have exact view of what the wheels of the Honda vehicle touched and contacted as the vehicle of the Defendant was going through the gates, in particular the left foot of the Complainant. Therefore, the Court does not accept the evidence of Mr. Hudson and Mrs. McIntosh when both said they did not see the Defendant's vehicle touch the Complainants foot.

Further, Mr. McIntosh in his testimony estimated the distance between the location of the Principals office where he was standing at the time of the incident where the Security Gates and the Security Guards were located to be only 30ft, and not 80ft.

The evidence of the Complainant and the Security Officer Musgrove was that there were school children, parents, teachers and the principal were still in the school compound and some were in the nearby area to see what was taking place.

During the evidence of the Defendant admitted her anger and dislike of the Complainant as a security officer, and showed her hostility towards the Complainant during trial.

It is important in any public Property, such as a primary school, to comply with by any visitor to protect the safety of the occupants, visitors and the property.

In the opinion of the Court the Defendant by not complying with the rules of the School and with the verbal warnings of the Security Guards employed by the Ministry of Education, by her actions caused the incident of assaulting the Complainant with a dangerous instrument, by the Defendant drove her Honda vehicle through the security gate thereby contacting/touching and hurting/injuring the left foot of the Complainant. [Emphasis Mine]

According the ingredients of the offence under Section 265 (5) that the Defendant is charged with and according to the requisite standard of proof that required of the Prosecution, which is beyond doubt, the Court finds the Defendant, Persis Pinder, guilty of the offence of Assault with Dangerous Instrument contrary to section 265 (5) of the Penal Code chapter 84."

9. The Record continues:

Defendant has no antecedents

Sentence

Defendant is conditionally discharged for a period of nine months.

Defendant to attend the Department of Rehabilitation for anger management.

To attend monthly Court review to confirm attendance of Department of Rehabilitation program.

To be of good character.

In breach of any of the conditions of the Conditional Discharge, the Defendant to pay a fine of five hundred

($500.00) or four months Custodial Sentence at Correction Centre.

All the adjourned Court dates are provided at the request of Counsel of the Defendant Mr. Paul Whitfield.

1st adjourned date for Court review 26th March, 2018, 26th April, 2018, 25th May, 2018, 26th June, 2018 27th July, 2018 27th August, 2018, 26th September 2018, 26th October, 2018 and final Court review dated 26th November, 2018.

10. The threshold question is whether the court has jurisdiction to hear this appeal. Counsel for the parties agree that the court has jurisdiction, but jurisdiction cannot be conferred by the consent of the parties.

11. By the Notice of Appeal, the appellant states that she is appealing against her "conviction".

12. **Section 209 of the CPC** states:

> **209. The court, having heard both the prosecutor and the accused person and their witnesses, shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, or may <u>without proceeding to conviction</u>, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally. [Emphasis Mine]**

13. This section gives the magistrate the following options after hearing the prosecutor and the accused and their witnesses. The magistrate may:

> **a) Convict the accused and pass a sentence on the accused or make an order against the accused according to law; or**
>
> **b) Acquit the accused; or**
>
> **c) Without proceeding to conviction make and order discharging the accused absolutely or conditionally, even if the court finds that the charge against the accused was proved.**

14. The only basis a magistrate's court could give an accused a discharge is under **Section 209 of the CPC.** There is no other provision in the law that enables a magistrate to give a discharge.

15. In my judgment a magistrate can only discharge an accused if he has decided not to convict the accused. Where a magistrate discharges an accused, he has not convicted the accused of the charge. There has been no conviction.

16. To hold that there was a conviction because that magistrate said that he found the accused 'guilty' would, in my judgment, be the wrong interpretation of what the magistrate did.

17. The use of the word "guilty" in her ruling was simply to say that the magistrate found the charge proved. Having found the charge proved, she proceeded without convicting the appellant, to give her a conditional discharge.

18. The appellant was not convicted, so an appeal against "conviction" cannot be maintained.

19. But **Section 14 of the Court of Appeal Act** does not appear to limit an appellant's right to an appeal against conviction.

20. The section says:

> **"Any person who is dissatisfied with any judgment, sentence or order of a magisterial court"**

21. This is the identical language found in **Section 231 of the CPC**.

22. The appellant really seeks to appeal the decision of the Magistrate that she found the charge "proved".

23. But is that decision a "judgment, sentence or order" for the purposes of section 14 of the Court of Appeal Act or section 231 of the CPC?

24. There is no definition of the word "judgment" found in the CPC. As a matter of grammar, a judgment is an opinion, decision or a sentence given by a court of law.`

25. The definition in the Court of Appeal Act however says:

> **"judgment or sentence' includes any order of any court made consequent upon the conviction of an appellant with reference to the appellant or his wife or his children"**

26. This seems to suggest that the word judgment is being used with reference to a conviction, but it is not conclusive of the definition of "judgment".

27. The expression "judgment, sentence or order" was considered by the Court of Appeal of the Eastern Caribbean Supreme Court in **Rondel Meade et v Commissioner of Police** MNIMCRAP 2018/0007.

28. In that case the court had to consider whether there was a right of appeal against a decision of a magistrate to hear charges that had previously been laid before another magistrate who had since demitted office. The appellant had argued before the magistrate that new charges would have to be brought and that the magistrate could not hear the charges that had previously been laid before the previous magistrate. The magistrate ruled that she had the ability to assume jurisdiction to hear the charges laid before the previous magistrate.

29. The Court of Appeal had to consider whether they had jurisdiction to hear that appeal. **Section 242 of the Criminal Procedure Code of Montserrat** states:

> "**242. (1) Save as hereafter in this Code provided, a person who is dissatisfied with a judgment, sentence or order of the magistrate's court in a criminal cause or matter to which he is a party may appeal to the Court of Appeal against the judgment, sentence or order either by motion on matters of law or fact (or both), or by way of case stated on a point of law only, as hereafter provided and the Court of Appeal shall have jurisdiction to hear and determine any appeal in accordance with the provisions of this Part."**

30. It should be noted that the section is identical to the provision in our law.

31. In **Meade**, the Court of Appeal said:

> **"[8]The jurisdiction of the Eastern Caribbean Court of Appeal to hear appeals from criminal proceedings in the Magistrate's Court is governed, in addition to s.242 of the Criminal Procedure Code, by s. 30 of the Supreme Court Act2 and by s. 108 of the Magistrates Court Act. Section 242 is already set out above. These are the other provisions:**
>
> **"30. (1) Subject to the provisions of the Magistrate's Court Act, the Criminal Procedure Code and to rules of Court, an**

appeal shall lie to the Court of Appeal from any judgment, decree, sentence or order of a magistrate in all proceedings.

108. An appeal shall lie to the Court of Appeal from any judgment, sentence or order of the Magistrate's Court in any criminal cause or matter in accordance with, and subject to the provisions of Part 10 of the Criminal Procedure Code."

[9] The referenced sections all refer to appeals from "judgment, sentence or order", while s. 30(1) adds the word "decree". The crucial question is whether these sections, on their true construction, are confined to decisions of the Magistrate which are dispositive, i.e. which conclude the case, or whether they include any decisions that are made during the course of proceedings in the Magistrate's Court"

32. That court proceeded to consider the issue and reviewed authorities in different jurisdictions. Its determination is found in paragraph 19 of its judgment where it said:

> **"[19] We therefore concluded that s.242 of the Criminal Procedure Code, s. 30 Supreme Court Act, and s. 108 Magistrates Code only permit appeals to this Court from final decisions, i.e. decisions that finally adjudicate the matter. Appeals are not permitted from interlocutory rulings. Further, that it makes no difference whether the appeal is by motion or by case stated. "**

33. I agree with the conclusion of the Court of Appeal of The Eastern Caribbean Supreme Court and hold that the expression 'judgment sentence or order' found in **Section 14 of the Court of Appeal Act** and **Section 231 of the Criminal Procedure Code** only permits appeals from decisions of Magistrates that finally disposes of the matter before the magistrate.

34. A finding that a charge has been proved and conditional discharge made was not a decision that finally disposed of the matter before the magistrate. The appellant had to satisfy the conditions and report back to the magistrate periodically to satisfy her that the appellant was complying with the conditions.

35. If she breached the conditions, she was still liable to a fine of $500 of in default of payment 4 months imprisonment.

36. In the circumstances, the decision that the charges were proved is not a decision which can be appealed to this court. In my view this court has no jurisdiction to hear this appeal against 'conviction'.

37. But assuming that I am wrong on the issue of jurisdiction, I will proceed to consider the appeal on its merits.

38. I have set out the grounds earlier and will proceed to deal with the grounds on inverse order.

Grounds 11 and 12:

Ground 11- A material irregularity substantially affecting the merits of the case was committed in the course of the proceedings, viz., the learned Magistrate having put the Appellant to her election for trial by jury or summary trial in the Magistrates' Court (the alleged offence (as opposed to conducing a preliminary inquiry), notwithstanding the fact that the appellant elected jury trial, in breach of the provisions of Section 214 of The Criminal Procedure Code. Ch. 91.

Ground 12- The decision was erroneous in point of law insomuch as the learned Magistrate having put the appellant to her election for trial by jury or summary trial in the Magistrates' Court (the charge being triable either way), proceeded to conduct a summary trial for the alleged offence (as opposed to conducting a preliminary inquiry), notwithstanding the fact that the appellant had elected jury trial, in breach of the provisions of Section 214 of The Criminal Procedure Code.

39. The record before us reflects that the appellant elected summary trial. The record does not reflect that the appellant or her counsel objected to the fact that the proceedings were not by way of a preliminary inquiry. No such challenge is contained in the appellant's submission to the magistrate either at the no case submission at the end of the prosecution's case on in the submissions at the end of the evidence. It was not contained in the notice of intention to appeal filed in February, 2018.

40. No appeal can rely on the ground of the jurisdiction of the magistrate's court to hear a case unless that objection was taken before the magistrates. We are unable to go behind the record and these grounds cannot succeed.

Ground 10:The appellant was never informed by the learned Magistrate of her right of appeal;

41. I have set out **Section 232** earlier in this judgment.

42. Two points should be noted.

43. Firstly, the obligation to give notice of the right to appeal only arise where a person has been convicted. If there has been no conviction the obligation imposed by **Section 232** does not arise.

44. Secondly, the appellant has in fact appealed. Her counsel was present at the time she was found guilty and given the conditional discharge. Even if the magistrate was obliged to give a notice under **Section 232**, she has suffered no prejudice by the omission by the magistrate to do so. There is no basis for setting aside the magistrate's decision to find the appellant guilty and grant a conditional discharge on this ground.

Ground 9: Defense Counsel was never afforded the opportunity to mitigate on behalf of the Appellant before sentencing;

45. There is no appeal against the sentence of a conditional discharge. In the circumstances, even if the appellant were correct, there would be no miscarriage of justice. Moreover, the Record reflects that the appellant's counsel was present and the reporting dates were given to accommodate the schedule of counsel. This ground has no substance.

Ground 8: A material irregularity substantially affected the merits of the case was committed in the course of the proceedings, viz., before any evidence had been had, the learned Magistrate admonished the appellant "do not bring anyone in here to tell lies for you";

46. There is nothing in the Record to reflect that this statement was made by the magistrate. There is nothing in any of the submissions made to the magistrate on the no case submission or and the end of the evidence to suggest that any complaint was made about that statement. In any event, it is difficult to appreciate how the statement could be a material irregularity that substantially affected the merits of the case.

Ground 7: The sentence passed by the learned Magistrate was based on a wrong principle.

47. This ground was abandoned. No submissions were made under this ground in the appellant's written submissions and counsel for the appellant stated that the appellant was not in fact appealing against the sentence.

48. I will deal with the remaining grounds collectively. In effect the appellant submits that the evidence was such that no reasonable magistrate, properly considering the evidence, could have found the appellant guilty. The evidence of the prosecution was conflicting, and the magistrate took into account extraneous matters that occurred before the time on the incident.

49. In **McCartney v Commissioner of Police [1999] BHS J No 35** Sawyer CJ (as she then was) on an appeal from the decision of a magistrate said:

> **"30 Another ground of appeal which was argued for the appellants Dean and McCartney is that the decision of the Magistrate was against the weight of the evidence. Weight has to do with truth which in turn depends on an assessment of the credibility of the witnesses on one side and another. It has been said many times by many eminent judges, far more lucidly than I am able to do, that an appellate court should be very careful before it seeks to substitute its own judgment on facts, which depend on the assessment of the truthfulness of witnesses which the original trier of facts has seen and observed. I adhere to that principle in this case. Mr. Evans argued very eloquently about the dangers in accepting the evidence of witnesses such as Woods and Correll in light of the fact that they were particeps criminis and self-confessed liars and cheaters. Those points were drawn to the attention of the Learned Magistrate and I find no error in how she assessed the witnesses. That ground of appeal therefore fails."**

50. In this case the magistrate in her ruling records that:

> **"The Court considered the evidence of all the persons testified during the trial and the physical evidence at the locus, which also included distance, location of the parties testified at the time of the incident, space available for pedestrians and the limited designated car park areas in the compound."**

51. She then goes further to record that she believed the complainant and the other security guard, Ms. Musgrove, to be truthful and that she did not believe the evidence of the appellant and her witnesses. The evidence which the magistrate accepted was that "the appellant drove her Honda vehicle through the security gate thereby contacting/touching and hurting/injuring the left foot of the Complainant."

52. It is clear that the magistrate carefully considered the evidence. Once the magistrate accepted the evidence of the complainant and Musgrove as truthful, she was entitled to find the appellant guilty. There is simply no basis for this court, sitting on appeal, to set aside that finding as being unreasonable.

53. It is also clear that the magistrate did not regard the incident as one which warranted grave punishment. She did not convict the appellant and impose a fine as she could have done. A conditional discharge was as lenient a sanction as she could give.

54. This appeal is dismissed.

The Honorable Sir Michael Barnett, P

The Honorable Mr. Justice Isaacs, JA

The Honorable Mr. Justice Evans, JA