

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

**SIR HUGH ORDE, CHIEF CONSTABLE OF THE POLICE SERVICE OF
NORTHERN IRELAND**

Complainant/Respondent;

-and-

GERARD DEVLIN

Defendant/Appellant.

CAMPBELL LJ

[1] The question for the court in the case stated by the Youth Court is whether a person commits the offence of obstructing a police officer under Section 66(1) of the Police (Northern Ireland) Act 1998 by refusing to give the officer his name and address after he has been cautioned and arrested for another offence.

[2] The appellant, who was born on 27 March 1990, appeared before Lisburn Youth Court on 1 February 2006 charged with the offences of disorderly behaviour in a public place contrary to Article 18(1)(a) of the Public Order (Northern Ireland) Order 1987 and obstructing Constable Wilson in the due execution of his duty contrary to Section 66(1) of the Police (Northern Ireland) Act 1998. He was found guilty of the offence of disorderly behaviour and this conviction does not form part of the present appeal. On 1 February 2006 the court adjourned to a later date the hearing of the charge of obstruction for legal submissions. These were heard on 5 April 2006 and the court gave its decision on 21 June 2006 in which it found the appellant guilty of obstructing the constable.

[3] Section 66 of the Police (Northern Ireland) Act 1998 provides:

“66. - (1) Any person who assaults, resists, obstructs or impedes a constable in the execution of his duty, or

a person assisting a constable in the execution of his duty, shall be guilty of an offence.

1(A) Any person who assaults, resists, obstructs or impedes a designated person in the execution of his duty, or a person assisting a designated person in the execution of his duty, shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) or (1A) shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both."

[4] As appears from the case stated the youth court found the following facts:

"On Saturday 3 September 2005 police on mobile patrol responded to a radio transmission to a disturbance in Main Street, Glenavy. Police were in the process of making an arrest when the appellant became involved. He shouted and used abusive language to the police. He was warned about his behaviour but tried to lunge forward towards police who were making an arrest. He was therefore arrested by Constable Wilson for disorderly behaviour. He struggled and was placed in a police vehicle and was cautioned. He replied: 'All right. I am sorry'. He was conveyed to the police station and on the journey became abusive. He refused to give Constable Wilson his name and details while in the vehicle and at Lisburn Police Station he continued to refuse to give his name. His mother arrived at the police station and it was his mother who first gave his name and details to the police."

[5] Mr Philip Magee SC (who appeared with Mr Declan Quinn for the appellant on the hearing of the appeal) submitted:

- (i) Obstruction requires an act whether physical or non-physical. The refusal by the appellant to give his name and address did not constitute such an act.
- (ii) If it did constitute such an act the appellant was under no duty to answer the constable's questions.
- (iii) If he was under such a duty the appellant had a lawful excuse for not doing so.

[6] "Obstructing" has been defined as "Making it more difficult for the police to carry out their duties" – Lord Goddard CJ *Hinchcliffe v Sheldon* [1955] 3 All ER 406 at 408. This was followed in this jurisdiction in *Clinton v Kell* [1993] NIJB 10 at page 56 where MacDermott LJ, sitting in a Divisional Court, said of the verb 'obstructs'

"we consider that the primary meaning is the true meaning- namely making it more difficult for the police to carry out their duty."

[7] *In the Matter of a Reference by Her Majesty's Attorney General under Section 15 of the Criminal Appeal (Northern Ireland) Act 1980 and In the Matter of The Queen v Lee William Clegg and Others (NICA 21 October 1994)* the question before the Court of Appeal was what constituted obstruction contrary to Section 7(1)(a) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968. The answer that the court gave was that a constable may be obstructed in the execution of his duty by physical or non-physical acts and it added that the latter acts may include the making of a false statement. The court also made it clear that in every case the tribunal of fact must be satisfied beyond doubt that the constable was in fact obstructed. Mr Magee relied on this authority in support of his argument that there must be an act and that the omission to provide a name and address is not an act.

[8] Although it may make it more difficult for a police officer to carry out his duty if a defendant refuses to give his name and address it was held in *Rice v Connolly* [1966] 2 QB 414 that unless there is a legal obligation to do so this does not amount to 'wilful obstruction' under s.51 of the Police Act 1964. Lord Parker CJ said at p. 419:

"...it seems to me quite clear that the defendant 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 ingredient, and the one upon which in my judgment this case revolves, is whether the obstructing of which the defendant was

guilty was a wilful obstruction. 'Wilful' in this context not only in my judgment means "intentional" but something which is done without lawful excuse, and that is indeed conceded by Mr Skinner who appears for the prosecution in this case. Accordingly, the sole question here is whether the defendant 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 although 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 the right of the individual to refuse to answer questions put to him by persons in authority, and to refuse to accompany those in authority to any particular place; short, of course, of arrest."

He continued at p.420:

"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 at in that perfectly general way, it was not shown that the refusal of the defendant to answer the questions or to accompany the police officer in the first instance to the police box was an obstruction without lawful excuse."

[9] In the course of the argument we were referred to *Dibble v Ingleton* [1972] 1 QB 481 where a motorist who was suspected of driving when under the influence of alcohol was required to provide a specimen of breath. As he claimed that he had consumed alcohol only a few minutes earlier the constable had to wait until 20 minutes had elapsed before administering a breath test. Meanwhile the appellant consumed more alcohol supplied to him by one of his passengers so making it impossible for the constable to perform his duty under the Road Safety Act. The question for the court was whether the drinking of alcohol, with the intention of making it impossible to ascertain from a specimen taken subsequently if the level of alcohol in his body when he was stopped exceeded this prescribed limit, could amount to wilful obstruction of the officer in the execution of his duty. Bridge J. delivering the leading judgment said at page 488:

“For my part I would draw a clear distinction between a refusal to act, on the one hand, and the doing of some positive act on the other. In a case, as in *Rice v Connolly* [1966] 2 QB 414, where the obstruction alleged consists of a refusal by the defendant to do the act which the constable had asked him to do – to give information, it might be, or to give assistance to the police constable – one can see readily the soundness of the principle, if I may say so with respect, applied in *Rice v Connolly*, that such a refusal to act cannot amount to a wilful obstruction under Section 51 unless the law imposes upon the person concerned some obligation in the circumstances to act in the manner requested by the police officer.”

Mr Magee submitted on this line of authority that the appellant was under no legal duty to provide the constable with his name and address.

[10] Finally, if the appellant’s behaviour did amount to an ‘act’ and he was under a legal duty to provide his name and address it was submitted by Mr Magee that the appellant had a lawful excuse for not doing so. He had been arrested for the offence of disorderly behaviour and cautioned before the alleged obstruction took place. Since he had just been told by the constable that he did not have to say anything in such circumstances he had a right to remain silent.

[11] Mr Valentine, who appeared on behalf of the respondent, submitted that *Rice v Connolly* could be distinguished as ‘wilful’ appears in s. 51 of the Police Act 1964 but not in s. 66(1) of the Police (Northern Ireland) Act 1998. In *Rice* ‘wilful’ was held to mean not only ‘intentional’ but something that is done without lawful excuse. So it was argued that the omission of ‘wilful’ in s.51 could mean that the appellant is guilty of the offence of obstruction in such circumstances where, at least, it would not incriminate him.

[12] The absence of the adverb ‘wilfully’ from the legislation in this jurisdiction does not remove the requirement that the act relied upon must be ‘wilful’ in the sense of being voluntary or reckless. In *R v Sheppard* [1981] AC 394, at 404, Lord Diplock expressed the view that if ‘wilfully’ is given the narrow meaning that the wilfulness required extends only to the doing of the physical act itself it is otiose since even in absolute offences the physical act relied upon as constituting the offence, must be wilful in this limited sense, for which the synonym in the field of criminal liability that has become the common term of legal art is ‘voluntary’.

[13] Provided the act is 'voluntary' does the absence of 'wilfully' in s. 66 mean that a defendant is guilty of obstruction where he has a lawful excuse? In *Rice v Connolly* Lord Parker said at page 419:

"The only remaining ingredient and the one upon which in my judgment this case revolves, is whether the obstructing of which the defendant was guilty was a wilful obstruction "Wilful" in this context not only means in my judgment "intentional" but something which is done without lawful excuse, and that indeed is conceded by Mr Skinner 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 his Text Book of Criminal Law 2nd Ed. at p 202 Dr. Glanville Williams suggests that in *Rice v Connolly* the Divisional Court;

"reached an impeccable conclusion for a reason that was slightly flawed but substantially sound. The impeccable conclusion was that a citizen who refuses to answer the questions of the police is not guilty of wilfully obstructing them in the execution of their duty. The slightly peccable reason, contained in the leading judgment delivered by Lord Parker CJ, was that the offence requires wilfulness, which implies an absence of lawful excuse; and the citizen has a lawful excuse for not answering questions, presumably because of his "right of silence." The objection to this line of argument is, first, that questions of excuse have nothing to do with the mental state of wilfulness. Secondly, the logical and proper reason why a failure to answer the questions of the police is not an obstruction is not because of any specific right the citizen has but simply because an "obstruction" must be taken to mean an active obstruction, not a mere failure to co-operate. If we are to be put under a legal *duty* to help the police, it must be by an Act of Parliament; and Parliament should say in what respects we are required to help the police on their request, and it should provide proper exemptions, and name the appropriate penalty for refusal. The job ought not to be done by judicial "interpretation" of the obstruction offence, which was obviously

designed to do nothing more than prevent active obstructions.”

He goes on to say:

“To be fair to Lord Parker, although he started on the wrong foot he arrived at the right conclusion, because he said: ‘Though every citizen has a moral duty . . . to assist the police, he has no legal duty to that effect’.”

[14] We conclude that the appellant by his failure to co-operate cannot be said to have obstructed the constable by failing to give the constable his name and address when he was under no legal duty to do so.

[15] Mr Valentine sought to distinguish *Rice v Connolly* on the further ground that the defendant was not suspected of any offence in *Rice* and had not been arrested unlike the appellant who had been arrested as he was reasonably suspected of an offence. In those circumstances the police were under a duty to bring him to justice, and the failure on his part to disclose his name and details made it more difficult for them to do so. At the time of this alleged offence the Police and Criminal Evidence Order (NI) 1989 Article 27 (since repealed) provided:

“(1) Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

...

The general arrest conditions are –

(3) (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the constable

(b) that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;

(c) that-

(i) the relevant person has failed to furnish a satisfactory address for service; or

(ii) the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service..."

Disorderly behaviour under s.18 of the Public Order (NI) Order 1987 is a summary offence and Mr Valentine submitted that the power of arrest of a person who has failed to furnish a satisfactory address implies a corresponding duty to provide this information.

[16] It could equally be argued that as the appellant was at the relevant time a child the officer was under a duty to ascertain his name in order that a suitable parent or guardian could be contacted and informed that the appellant had been arrested and was being detained in the police station (see article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998) so placing a corresponding duty on the appellant not to obstruct him in this task.

[17] In an article entitled "Demanding Name and Address" 66 LQR (1950) Dr Glanville Williams dealt with this proposition as follows:

"...it is submitted that the refusal by an offender to give his name and address does not constitute an obstruction, for at least two reasons. First, if it were an obstruction, all the statutes making it an offence to refuse to give name and address in specific situations would have been unnecessary. When, for example, Parliament passed the Public Order Act in 1936, it must have been thought that the police had no general power to demand name and address. Secondly, it is a fundamental principle of English law that an accused person cannot be interrogated or at least cannot be forced to answer questions under a legal penalty if he refuses; this principle is absolute, and does not admit of exception even for a demand of name and address, unless a statute has expressly created an exception. To say that the police have a duty to gather evidence, and therefore that a criminal's refusal to give his name and address is an obstruction, is far too wide, because the same premises would yield the conclusion that a criminal's refusal to confess to the crime is an obstruction".

In *Moore v The Queen* 43 C.C.C. (2d) 83 a cyclist rode through a red light. A police officer followed him and when the accused stopped the officer asked him for identification. The Supreme Court of Canada held by a majority that

the police officer was performing his duty and by refusing to accede to the officer's request the accused was obstructing him. Dickson J dissenting said:

"The fact that a police officer has a duty to identify a person suspected of, or seen committing, an offence says nothing about whether the person has the duty to identify himself on being asked. Each duty is entirely independent. Only if the police have a lawful claim to demand that a person identify himself, does the person have a corresponding duty to do so."

In *Elder v Evans* [1951] NZLR 801 the statutory provision under consideration provided for arrest without warrant of any person who, within view of a constable, offends in any manner against the Act, and whose name and residence are unknown to such constable and cannot be ascertained by him. It was submitted that by implication it was obstruction by the accused to refuse to give his name and address. At 806 of the report Hay J. said "It would be going too far to hold that a mere nondisclosure by a person of his name and address amounts to wilful obstruction, even where the person making the inquiry is a constable engaged in the execution of his duty. "

[18] An offence under article 18 of the Public Order (NI) Order 1987 is tried summarily and the constable had power to arrest the appellant under article 27 of the Police and Criminal Evidence Order (NI) 1989 if he failed to give his name and address. Under a number of provisions (for example s.21 of the Justice and Security (NI) Act 2007 and its precursor s.89 of the Terrorism Act 2000) failure to provide identity is made an offence. However, Parliament did not make it an offence under article 27 of the Police and Criminal Evidence Order (or article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998) and we do not accept that either provision by implication imposes a reciprocal duty on the citizen to provide his identity. As Professor Smith observed at (1993) Crim.L.R. 535 "Liability for omissions is exceptional in the criminal law. It exists only when the law imposes a duty to act."

[19] In the case stated it is said that on the journey to the police station following his arrest for disorderly behaviour the appellant was abusive. Mr Valentine was encouraged by this finding to rely on *Ricketts v Cox* (1982) 74 Cr. App. R. 298. In *Ricketts* the finding of the magistrates was that police officers were making inquiries into a serious assault which had recently been committed. They were entitled, as part of their duty, to put questions to the two men as to their recent movements. From the outset the response of the defendants was to be abusive, unco-operative and positively hostile towards the officers. They used obscene language which was held to have been calculated to provoke and antagonise the officers. Ultimately they made to walk away from the officers before the completion of their inquiries. They were convicted of obstruction. Ormrod LJ delivering the judgment of the

Divisional Court held that the totality of their behaviour and attitude amounted to an obstruction of the police officers in the execution of their duties and they did not have a lawful excuse.

Counsel referred also to *Green v Director of Public Prosecutions* 155 JP 816 where the appellant was convicted of wilfully obstructing a police officer in the execution of his duty contrary to s 51 of the Police Act 1964. The facts were that two police officers on mobile patrol and searching for a man involved in aggravated burglary saw the appellant standing next to a girl who was crying. Having ascertained that she was all right the officers noticed another man standing nearby whom they suspected was involved in the burglary. An officer approached the man whom he suspected of burglary to question him and as he did so the appellant (the man's brother) shouted "Say fuck all to them" and continued being abusive and persistently shouted to his brother not to say anything. He was warned about his behaviour but he continued to shout and swear and when told to be quiet or he would be arrested, he replied "fuck off". He was then arrested for obstruction. In the case stated the justices expressed their opinion that the police officers were entitled to question the appellant's brother in the course of their duties without detaining him or exercising any element of compulsion, in order to confirm or allay their suspicions and that the appellant's behaviour had made it impossible for them to do so. The question they posed for the opinion of the High Court was whether the appellant in saying to his brother "Say fuck all to them" when his brother was being questioned by police officers, did or said anything which amounted in law to obstruction of a police officer whilst acting in the execution of his duty. It was held (allowing the appeal and quashing the conviction) that it was lawful for a suspect not to answer questions directed to him by the police and for a third party to advise a suspect of his right not to answer questions. If, however, the third party by his abusive, persistent and unruly behaviour, behaved in a way that went well beyond the exercise of his legal rights and rendered the police officers' task more difficult this could amount to obstruction.

[20] As the issue as to whether the appellant's abusive behaviour could amount to obstruction was not raised before the Youth Court we do not regard it as appropriate for it to be considered for the first time on appeal without any finding as to the nature and extent of the abusive behaviour that is relied upon. It suffices to observe that *Ricketts v Cox* has been described as 'a doubtful decision' (Smith & Hogan 9th ed. at 422) where the authors suggest that if the defendant's language amounts to some other offence he should be charged with that offence.

Conclusion

[21] Although it made it more difficult for the constable to perform his duty the appellant could not be guilty of an offence under s. 66 of the Police

(Northern Ireland) Act 1998 as he was not obliged either at common law or by statute to give the constable the information that he requested. The question will therefore be answered in the negative and the matter remitted to the Youth Court with a direction to enter an acquittal.