



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**  
3

4 **SCA: 10 of 2024**  
5  
6  
7

8 **LOVELL KAY MARRIOTT**  
9

10 **V.**  
11

12 **R**  
13  
14  
15

16 **Appearances:** **Appellant in Person**  
17  
18 **Mrs. Sophie Quinton-Carter for the Respondent**  
19

20 **Before:** **The Hon. Justice Cheryll Richards KC**  
21

22 **Submissions Heard:** **28<sup>th</sup> June 2024**  
23

24 **Judgment:** **11<sup>th</sup> July 2024**  
25  
26  
27  
28

29 ***Criminal Law - Section 181 of the Criminal Procedure Code (2021 Revision), Appeal Against***  
30 ***Decisions of the Summary Court, Principles on Appeal.***  
31



## JUDGMENT

- 1  
2  
3 1. This is an appeal against conviction and sentence. On the 6<sup>th</sup> day of February 2024, the  
4 Appellant was convicted after trial of three offences of Resisting Arrest (1) and  
5 Disorderly Conduct (2). The prosecution conceded that there was no case to answer in  
6 respect of two charges of Assaulting Police and the Appellant was found not guilty on  
7 those charges.  
8

### 9 **THE CONVICTIONS**

- 10  
11 2. The three offences for which the Appellant was convicted are: -  
12

13 *i. Charge 00191/2022 - (3)*

14 Resisting Arrest, contrary to section 123 (b) of the *Police Act* (2021 Revision). The  
15 particulars are that the Appellant on the 14<sup>th</sup> day of February 2022, in the vicinity of  
16 the Royal Bank of Canada, Shedden Road, George Town, Grand Cayman, Cayman  
17 Islands, resisted Police Constable 236 Hayles, a Police Officer acting in the execution  
18 of his duty.  
19

20 *ii. Charge 00191/2022 - (4)*

21 Disorderly Conduct, contrary to section 164 (1) (g) of the *Penal Code* (2019  
22 Revision). The particulars are that the Appellant on the 14<sup>th</sup> day of February 2022,  
23 on the Linford Pierson Highway, George Town, Grand Cayman, Cayman Islands,  
24 threw rubbish in a public place.  
25

26 *iii. Charge 00191/2022 - (5)*

27 Disorderly Conduct, contrary to section 164 (1) (g) of the *Penal Code* (2019  
28 Revision). The particulars are that the Appellant on the 14<sup>th</sup> day of February 2022,  
29 in the vicinity of the Royal Bank of Canada, Shedden Road, George Town, Grand  
30 Cayman, Cayman Islands, threw rubbish in a public place.



- 1
- 2 3. The Appellant was sentenced to a conditional discharge pursuant to s.41 of the *Penal*
- 3 *Code*. The condition is that no further offences are committed for a period of 12 months.
- 4 The Appellant was also ordered to pay costs of \$100.00 or one week imprisonment.
- 5

6 **THE APPEAL**

7

- 8 4. By Notice of Appeal filed on the 26<sup>th</sup> February 2024, the Appellant appeals her conviction
- 9 on the ground of “unfair trial”. Leave to appeal out of time was not opposed by the
- 10 Respondent and was granted by this Court.
- 11

- 12 5. In her Affidavit in Support of Appeal filed 15<sup>th</sup> May 2024, the Appellant refers to an
- 13 earlier incident in 2017 when she was arrested during a protest at the misdiagnosis of her
- 14 by Dr. Marc Lockhart. She states that on 14<sup>th</sup> February [2022] at the Scotia Bank building
- 15 downstairs from the Police Headquarters in George Town, she was accosted by three
- 16 police officers who attacked her from behind and forcibly restrained and handcuffed her
- 17 without explanation. Despite her pleas for medical attention and the loosening of
- 18 handcuffs she was taken to and detained at Fairbanks (Detention Centre) for three days.
- 19 She suffered injuries to her feet and knee during the altercation which continues to cause
- 20 pain and discomfort. The Appellant then lists grounds as follows: -
- 21

22 “1. I was subjected to extreme bail conditions for two years, including

23 restrictions on my movement and the prohibition of protests near

24 government buildings, despite the unrelated nature of these conditions to

25 the charge against me.

26

27 2. My arrest for participating in a protest violated my human rights.

28

29 3. During my trial on February 6, 2024, before Magistrate McFarlane I was

30 denied the opportunity to present evidence including photographs of my

1 injuries and CCTV footage contradicting the allegation against me. The trial  
2 was unfair and lacked evidence of resistance to arrest.

- 3  
4 4. Police Officer Montaque a witness in my case was removed from the trial  
5 by a judge raising concerns about the integrity of the proceedings.”  
6

7 In light of the aforementioned injustice, I respectfully request the Honourable Judge ensure  
8 a fair trial in my appeal.”  
9



10 **THE FACTS**  
11

- 12 6. The Learned Magistrate (“the Magistrate”) has provided verdict and reasons for sentence.  
13 At trial evidence was heard from five police witnesses and the Appellant.  
14
- 15 7. The summary facts are these. On the morning of the 14<sup>th</sup> February 2022, the Appellant  
16 was seen by police at two different locations throwing items onto the roadway. At about  
17 8:15am, PS Montaque was travelling to work in his private motor vehicle. He saw the  
18 Appellant on the Linford Pierson Highway. She was pulling pieces of wood and an old  
19 door and other items onto the roadway. The items were obstructing the traffic flow. He  
20 stopped and asked the Appellant to desist from doing this. She continued to do so. He  
21 reported it to 911 and began removing the items himself in order to get the traffic flowing.  
22 His evidence was that as fast as he removed the items, the Appellant put them back. He  
23 said that eventually he took hold of her and told her that he was placing her under arrest,  
24 and she would be prosecuted. She twisted away from him and told him that he needed to  
25 go and arrest Dr. Lockhart. She picked up her bag and walked off in the direction of  
26 George Town.  
27
- 28 8. About an hour and half later, the Appellant was seen by PC Hayles in the vicinity of the  
29 Royal Bank in central George Town. At the time there was debris across the lane in front  
30 of the area. The Appellant was seen throwing a tree stump and tree branches into the



1 roadway. Traffic was at a standstill. On the approach of the officers, the Appellant picked  
2 up a piece of white metal pipe and swung it at them. She told the officers that they were  
3 arresting the wrong person and that it was Dr. Lockhart that should be arrested. There  
4 was a struggle as the officers attempted to handcuff her and she was not complying with  
5 putting her hands behind her.

6  
7 9. At the end of the evidence of the third prosecution witness, the Appellant indicated that  
8 she had photographs of her injuries which were on her phone at her home. The Magistrate  
9 declined to adjourn the trial.

10  
11 10. The evidence of the Appellant was that she was engaged in a peaceful protest that  
12 morning. This included dancing, singing and handing out love notes. She did not resist  
13 arrest, and it was the police who approached her from behind and assaulted her causing  
14 injuries to her wrists and knee. When asked by the Magistrate, the Appellant said that she  
15 had nothing to say about the evidence given by the police that she was seen throwing  
16 garbage onto the roadways.

17  
18 **THE SUBMISSIONS**

19  
20 11. The Appellant submitted to this Court that her rights were violated in more ways than  
21 one. She was in a protest and did not just leave her rights to stand there. The Appellant  
22 stated that Dr. Lockhart attempted to kill her twice by giving her the wrong medication.  
23 She was brutally abused by police officers who kicked her to the ground. No one told her  
24 that she was under arrest. She was putting stuff onto her face when she was kicked to the  
25 ground. She was unaware that she was under arrest. It is a normal response when  
26 approached from behind to be startled. She was illegally arrested, and she has never  
27 retaliated. She is a law-abiding citizen, even when they kicked her to the ground. They  
28 kept pushing her down. They placed handcuffs on her like an animal. The cuffs were so  
29 tight. Another police officer came and shoved her. He slipped his hand under her and  
30 shoved her into the car. She was bleeding. The police officers sat on her back.



1 12. The Appellant said that the evidence of Police Officer Montaque was not in the file that  
2 she received. She submitted that this is unfair and not justice. PC Montaque obviously  
3 has something with her. The actions of the police towards her were callous, evil and  
4 dreadful.

5  
6 13. The Appellant said that she had asked the Magistrate for time to view the photographs  
7 that she had taken with all the bruises and bleeding. The Magistrate's response was that  
8 this is an old case. She had asked for the reason that Closed Circuit Television ("CCTV")  
9 footage was not present to prove that she did not resist arrest. She had also asked that she  
10 be allowed to present a counter claim.

11  
12 14. The Appellant said that human rights is a disgrace in this country. They have been abused.  
13 If you are Jamaican, you have no rights. She said that she will stand up for her human  
14 rights. They have been abused. They have destroyed her reputation and her family for her  
15 standing up for human rights and she will continue to stand.

16  
17 15. With respect to sentence the Appellant submitted that she believes her sentence is a  
18 mockery. It is a nice way of saying that they are putting you on bail. She submitted that  
19 she is not a hooligan. She is a decent citizen. This is an insult to her integrity and to her,  
20 a Godly woman. She said that she refuses to accept that kind of mockery.

21  
22 16. The Respondent submitted in response that there is nothing to suggest that the trial in the  
23 Summary Court was unfair or that the Magistrate made an error of law, or that the  
24 convictions are unsafe. Counsel submitted that: -

25  
26 a. *"Where grounds can be discerned from the Appellant's submissions, they are*  
27 *not made out.*

28  
29 b. *There is nothing in the Magistrate's reasons to indicate that PS Montaque was*  
30 *removed from the trial. It would appear that he gave evidence and that this*  
31 *went unchallenged, subject to no cross-examination by the Appellant, who*

1                    *insisted twice that she did not wish to do so. Further, the Magistrate warned the*  
2                    *Appellant that this would amount to a tacit acceptance of the officer's evidence.*

3  
4                    *c. Mid-trial, the Appellant raised the issue of photographs being available of her*  
5                    *injuries [19] but that they were on her phone which she had not brought to*  
6                    *court. It was discussed that an adjournment would be required and a hearing*  
7                    *as to their admissibility. The Magistrate considered the matter [20] and*  
8                    *determined it was not in the interests of justice to adjourn the trial for these to*  
9                    *be obtained.*

10  
11                   *d. The prosecution conceded submissions of no case to answer in respect of*  
12                   *charges 1 and 2.*

13  
14                   *e. During evidence in chief, the Appellant declined to address the allegation of*  
15                   *throwing items onto the roadway or rubbish into the road.*

16  
17                   *f. There is no mention of the Appellant being in possession of CCTV footage*  
18                   *during the trial. The only reference to CCTV came under cross-examination*  
19                   *when the Appellant remarked that, "I don't understand why there isn't a video*  
20                   *because I'm sure is CCTV all over in that place."*

21  
22                   *g. At the end of her evidence, the Appellant stated, "I am sorry that I did not really*  
23                   *take pictures of what was done to me". In any event, the Magistrate found that*  
24                   *any injuries suffered were likely a result of Appellant resisting the officers.*

25  
26                   *h. No request has been made for permission to adduce further evidence during*  
27                   *this appeal."*





1   **THE LAW**  
2

- 3       17. The Court’s powers on an appeal from a decision in the Summary Court are set out in  
4       s.181 of the *Criminal Procedure Code*. (2021 Revision)

5  
6               *“181. The court may adjourn the hearing of the appeal, and may, upon the hearing*  
7               *thereof confirm, reverse, vary or modify the decision of the Summary Court,*  
8               *including the passing of some other sentence (whether more or less severe) or remit*  
9               *the matter to the Summary Court for retrial, or may make such other order in the*  
10              *matter as it may think just, and may, by such order, exercise any power which the*  
11              *Summary Court might have exercised, and such order shall have the same effect*  
12              *and may be enforced in the same manner as if it had been made by the Summary*  
13              *Court: Provided that the court may, notwithstanding that it is of the opinion that*  
14              *the point raised in the appeal might be decided in favour of the appellant, dismiss*  
15              *the appeal if the court considers that no substantial miscarriage of justice has*  
16              *actually occurred.”*

17  
18   **ANALYSIS**  
19

- 20       18. The issues which arose in this case were essentially questions of fact for the tribunal of  
21       fact.

- 22  
23       19. The Magistrate had to be satisfied to the required standard that the Appellant, with the  
24       necessary mental elements resisted arrest and threw garbage onto the roadways on the  
25       two occasions identified. The Magistrate adverted to the burden and standard of proof  
26       and before reaching conclusions said this: -

27  
28               *“39 I reminded myself (and also explained to the Appellant) of the burden and*  
29               *standard of proof. I also explained that I am responsible for weighing up the*  
30               *evidence and deciding the facts of the case, and it is a matter for me to decide what*

1 *evidence is reliable and what evidence is not. In so doing, I may decide to reject*  
2 *some aspects of a witness' evidence and accept other aspects. Where there have*  
3 *been conflicts in the evidence, I must assess and come to a decision about how*  
4 *reliable, honest and accurate each witness is, and in doing so, have applied the*  
5 *same fair standards to each witness. I also reminded myself that I do not have to*  
6 *refer to or decide every disputed point that has been raised in the trial; only those*  
7 *that are necessary for me to reach my decision in this matter."*  
8

- 9 20. It is evident from this that the Magistrate was mindful of the standard of proof in  
10 assessing the evidence of the witnesses and that the same fair standards should be applied  
11 to all witnesses. Having heard and seen all the witnesses, the Magistrate concluded that  
12 the police witnesses were reliable and credible and accepted them as witnesses of truth.  
13 It is well within the purview of the tribunal of fact to assess and reach conclusions as to  
14 the credibility of each witness.



15  
16 **GROUND 2 – VIOLATION OF HUMAN RIGHTS**  
17

- 18 21. On the evidence, the Appellant was not arrested for protesting but for throwing garbage  
19 onto the roadways and blocking the free flow of traffic. The question for the Magistrate  
20 was whether there was a sufficiency of evidence to the required standard to establish this  
21 fact. While there was no burden on the defendant to prove anything, the Magistrate noted  
22 that the evidence was unchallenged on this aspect, and the Appellant's response was that  
23 there was no recollection of this occurring at all.  
24

25 **GROUND 3 – REFUSAL OF ADJOURNMENT**  
26

- 27 22. The Magistrate had a discretion whether to grant the adjournment sought for the  
28 defendant to produce pictures of her injuries. The Magistrate gave reasons for the  
29 decision not to grant an adjournment as follows: -  
30

1                    “[20]In all the circumstances, bearing in mind the age of the allegations, the lack  
2                    of any indication on the case management form or any endorsement on the file that  
3                    the Appellant intended to adduce evidence of injuries caused (although I accept  
4                    there was reference to assaults by officers), Practice Directions 5 of 2015 in relation  
5                    to trial management in the Summary Court and the overriding objective, I did not  
6                    consider that it was in the interests of justice to adjourn the trial for the  
7                    consideration of evidence which may have in any event had a limited bearing on  
8                    the triable issues. I therefore declined to adjourn the trial, but made it abundantly  
9                    clear to the Appellant that I would be prepared to hear her sworn account of what  
10                    occurred.”

11  
12                    “[41]... Given the age of these allegations, this being the 14<sup>th</sup> summary court  
13                    hearing and the 5<sup>th</sup> trial date, this tribunal noted that there was never any prior  
14                    indication, even with the involvement of counsel, that the Appellant intended to  
15                    adduce evidence of her injuries she alleges were caused to her as a consequence of  
16                    her interaction with the police on 14<sup>th</sup> February 2022.”

17  
18                    23. Given the range of matters considered, there is nothing to suggest that the Magistrate fell  
19                    into error in the exercise of the discretion. Of note is the consideration given to the  
20                    circumstances of the struggle as to whether the presence or absence of injuries would  
21                    have supported either version of events.

22  
23                    24. There is no evidence as to the existence of CCTV footage. The suggestion by the  
24                    Appellant that there must have been, cannot prove that there was, much less that anyone  
25                    had obtained such footage. The case had to be considered and determined on the basis of  
26                    the evidence that was before the Court.





1 **GROUND 4- POLICE OFFICER MONTAQUE**  
2

3 25. The Magistrate’s reasons record that Police Officer Montaque gave evidence in the trial  
4 and that the Appellant was twice offered an opportunity to cross-examine him and refused  
5 to do so. There is no evidence that Officer Montaque was removed from the trial by a  
6 judge raising concerns about the integrity of the proceedings as is asserted by the  
7 Appellant.  
8

9 **CONCLUSIONS**  
10

11 26. Having considered all the material before the Court and the submissions, there is nothing  
12 to suggest that the trial process was unfair. The Appellant was assisted by the Summary  
13 Court as an unrepresented defendant. The Appellant was told by the Court that a failure  
14 to cross-examine the witness Montaque would amount to tacit acceptance of his  
15 evidence. The Appellant cross-examined the witnesses PC Shemar Hayles, DC Andre  
16 Savoury and DI Anderson Taylor. Her case was put to them that there had been no  
17 resisting arrest and that they had run up behind her, grabbed her arm and kicked her to  
18 the ground. She chose to give evidence in her own defence.  
19

20 27. The Magistrate who saw and heard all the witnesses did not believe the Appellant.  
21 Detailed reasons were provided for the findings made. The findings included the  
22 following: -  
23

24 “ 40. *The case against the Appellant was strong. Critically, the Appellant accepted*  
25 *her presence and never denied throwing items of debris into the roadway. I heard*  
26 *throughout the trial sufficient evidence from which I felt able to safely and properly*  
27 *conclude that on 14 February 2022 the Appellant was guilty of the three remaining*  
28 *charges of resisting arrest, disorderly conduct by throwing rubbish onto the*  
29 *roadway on the Linford Pierson Highway and disorderly conduct by throwing*

1                    *rubbish onto the roadway in the vicinity of RBC. I made the following observations*  
2                    *and findings:*

3  
4                    (a) *The Appellant failed to challenge any of the evidence dealing with her being*  
5                    *seen to throw debris onto the road at both Linford Pierson Highway and the*  
6                    *vicinity of RBC, and when cross-examined by Ms. Lewis, claimed not to*  
7                    *recall this occurring at all – it would have been strange for the police to*  
8                    *approach and attempt to restrain her for no reason had she not been warned*  
9                    *or asked to desist from doing something she ought not to have been doing.*

10  
11                    (b) *There was clear evidence that the Appellant was spoken to by PS Montaque*  
12                    *at or around 8:15 am at the Linford Pierson Highway and asked to desist*  
13                    *from placing unwanted items on the roadway.*

14  
15                    (c) *There was clear and cogent evidence that the Appellant had seen PC Hayles*  
16                    *and PC Palmer approach her in the vicinity of RBC. I do not accept that*  
17                    *her action to pick up the white pipe was coincidental. The inference I draw*  
18                    *from the evidence heard is that the Appellant, knowing that she had been*  
19                    *placing items of debris into the roadway intended to avoid or resist being*  
20                    *apprehended by the police. I was therefore satisfied that the Appellant*  
21                    *picked up the white metal pipe with the intention to resist being arrested by*  
22                    *the police and thereafter failed to comply with their directions for an*  
23                    *extended period of time.”*

24  
25                    28. In respect of the Appellant’s evidence the Magistrate said this: -



26  
27                    “41. *I was unpersuaded by the Appellant’s account that she was assaulted by the*  
28                    *police and rejected it as either entirely untruthful, or at minimum greatly*  
29                    *exaggerated. I found it more likely that any injuries sustained by the Appellant were*  
30                    *caused by the evidence of her significant resistance to the police seeking to arrest*  
31                    *her in the proper execution of their duties. The Appellant provided no evidence in*

1            *support of her claims, nor was there any separate complaint made against the*  
2            *police.”*

3  
4            29. The central issue was the credibility of the witnesses. It was open to the Magistrate,  
5            having seen and heard the witnesses, to decide on the credibility of each witness and to  
6            decide which, if any witnesses, were speaking the truth.

7  
8            30. This Court has not identified any error in principle or in law by the Magistrate.

9  
10        **APPEAL AGAINST SENTENCE**



11  
12        31. The reasons given for sentence included the following: -

13  
14            *“42. Given the overall nature and circumstances of the case and considering the*  
15            *provisions of section 41(1) of the Penal Code, I took the view that it would be*  
16            *inexpedient to inflict any further punishment on the Appellant. In coming to this*  
17            *decision, I considered the following:-*

18  
19            *(a) the overall nature of the offences – (i.e., disorderly conduct offences are*  
20            *fairly low level offences and are not imprisonable – the maximum fine is*  
21            *KYD \$2,000);*

22            *(b) the Appellant’s lack of relevant antecedents;*

23            *(c) the Appellant’s limited means;*

24            *(d) the Appellants age and possibility of a mental health condition.”*

25  
26        32. The Magistrate demonstrated consideration of the relevant factors. While the Appellant  
27        submits in summary that the sentence is unduly restrictive, it is noted that on the evidence  
28        accepted by the Magistrate, the Appellant had been spoken to earlier that morning. She  
29        had been asked to desist from throwing garbage onto the roadway and had not. She had

1 repeated the same conduct in throwing garbage onto the roadway and blocking traffic at  
2 a different location a short time thereafter.

3  
4 33. In considering whether the sentence is proportionate to the offending, it would have been  
5 appropriate to consider that although minor, there was an element of repetition for which  
6 some deterrent element was necessary. Thus, the sentence does not appear to be  
7 manifestly excessive or wrong in law or principle.

8  
9 **CONCLUSION**

10  
11 34. No error in principle or law is identified such that this Court should interfere with, set  
12 aside the conviction or vary the sentence. The Appellant's appeal against conviction and  
13 sentence is dismissed. The sentence is affirmed.

14  
15 35. The Appellant is advised of her right to appeal on a point of law to the Court of Appeal  
16 should she so wish.

17  
18 **Dated this the 11<sup>th</sup> July 2024**

19 

20 **The Hon. Justice Cheryll Richards KC**  
21 **Judge of the Grand Court**